TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 255.

THE EUREKA PIPE LINE COMPANY, PLAINTIFF IN ERROR,

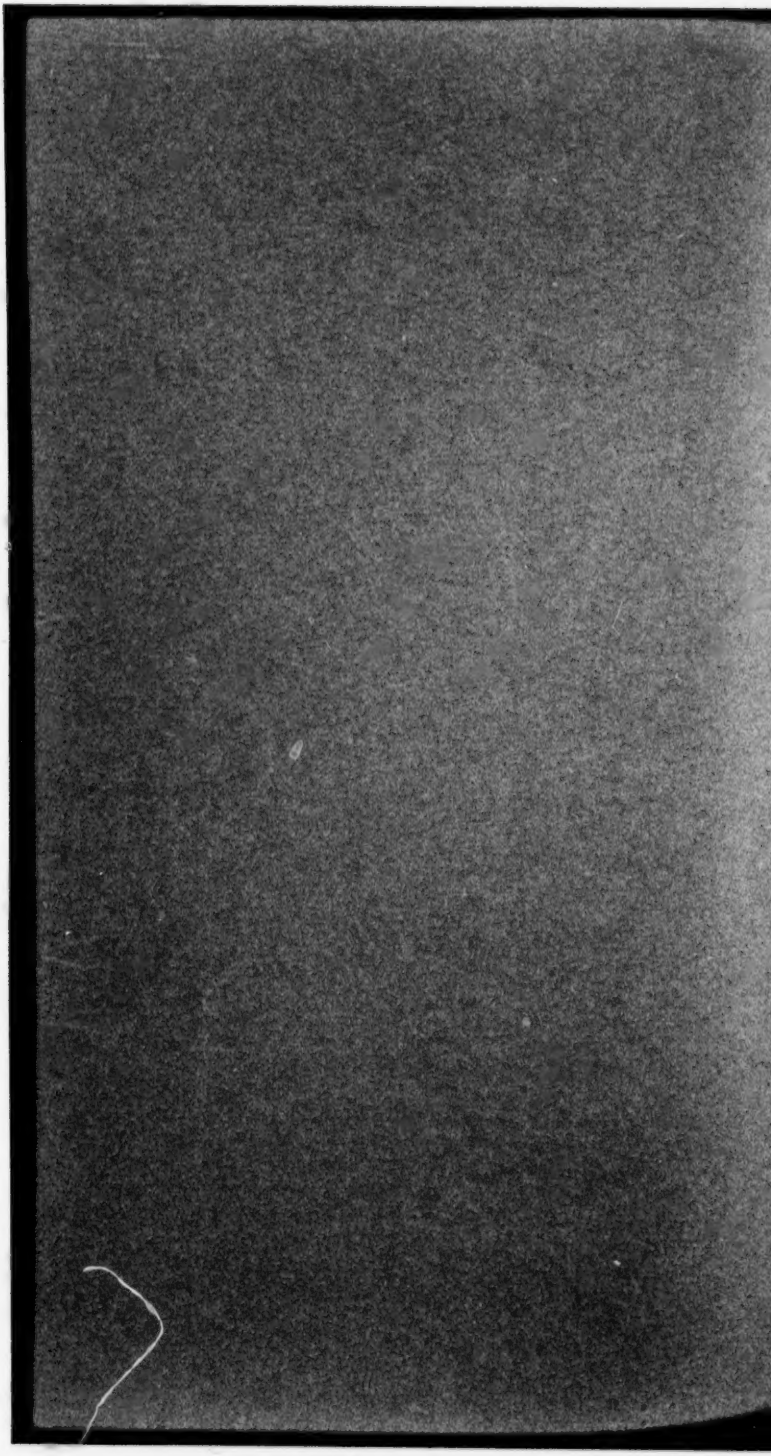
vs.

WALTER S. HALLANAN, STATE TAX COMMISSIONER, AND E. T. ENGLAND, ATTORNEY GENERAL, OF THE STATE OF WEST VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

FILED MARCH 27, 1914.

(20,128)



(28,162)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 805.

THE EUREKA PIPE LINE COMPANY, PLAINTIFF IN ERROR,

vs.

WALTER S. HALLANAN, STATE TAX COMMISSIONER, AND E. T. ENGLAND, ATTORNEY GENERAL, OF THE STATE OF WEST VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

INDEX.

	Original.	Print.
Record from circuit court of Kanawha County	1	1
Summons and proof of service	1	1
Bill of complaint	2	2
Exhibit "Form of Tax Return" filed with bill of complaint.	37	23
Exhibit filed with complaint, outline map of the oil pipe lines of The Eureka Pipe Line Company and certain of its connecting carriers	39	23
Notice of motion for temporary injunction, with proof of service	40	24
Joint and separate demurrer and answer of defendants in error to bill of complaint	41	25
Certificate of incorporation of The Eureka Pipe Line Company attached to answer	61	36
Order filing bill, etc., and recording motion for injunction	65	39

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 22, 1921.

	Original.	Print.
Order continuing hearing of plaintiff's motion for a temporary injunction, entered September 15, 1919	67	40
Order continuing hearing of plaintiff's motion for a temporary injunction, entered October 22, 1919	68	41
Order granting leave to defendants to file their demurrer and answer and continuing further hearing of cause, entered October 30, 1919	69	41
Order entered November 26, 1919, continuing the further hearing of the cause to December 18, 1919	70	42
Order entered December 22, 1919, continuing further hearing of the cause to January 26, 1920	71	42
Order entered January 27, 1920, directing that stipulation of certain facts be filed and made part of the record	72	43
Order entered January 27, 1920, directing filing of plaintiff's exceptions to the answer and plaintiff's motion to strike out certain parts of the answer and making the same part of the record	73	43
Order entered January 27, 1920, *nunc pro tunc* for January 26, 1920, continuing the hearing of the cause to January 27, 1920	74	44
Order entered January 27, 1920, *nunc pro tunc* for January 26, 1920, directing plaintiff's motion to amend the complaint and defendants' waiver and objections in regard thereto to be filed and made a part of the record	75	44
Order entered January 31, 1920, directing that the case be submitted on argument had for final consideration, decision, and decree	77	45
Exceptions filed by plaintiff to the defendants' answer	78	46
Transcript of evidence introduced by plaintiff	80	47
Exhibits—Acts of legislature of West Virginia relating to pipe lines	82	48
Deposition of John J. Kenney	110	62
Vernon S. Swisher	370	182
W. Dixon Ellis	473	230
J. W. Breiner	517	250
Vernon S. Swisher (resumed)	577	280
Lemuel W. Young, Jr.	852	406
Vernon S. Swisher (resumed)	873	416
John J. Kenney (resumed)	905	433
Forrest M. Towl	936	446
Chauncey B. Ware	1071	508
Reed D. Beardsley	1079	512
Forrest M. Towl (resumed)	1087	515
Vernon S. Swisher (recalled)	1125	522
John J. Kenney (recalled)	1214	570
Forrest M. Towl (resumed)	1283	601
Notary's certificate to depositions taken on behalf of plaintiff	1361	635
Copy certificate of appointment of notary	1363	636
Notice of taking depositions on behalf of defendants	1364	637

	Original.	Print.
Deposition of Waller C. Hardy	1366	638
A. G. Wamock	1377	644
P. M. Doty	1395	652
Waller C. Hardy (recalled)	1404	657
Notary's certificate certifying to defendants' depositions	1406	658
Stipulation as to assessed valuation and certain taxes in the State of West Virginia	1407	659
Plaintiff's Exhibit No. 1—Certificate of incorporation of The Eureka Pipe Line Company	1410	661
2—Certificate of increase of capital stock of The Eureka Pipe Line Company	1412	663
3—Detailed map of principal pipe lines of The Eureka Pipe Line Company	1414	663
4—Statement of deliveries of crude oil by The Eureka Pipe Line Company for twelve months ending June 30, 1919 (sheet 1)	1415	664
Same (sheet 2)	1416	666
5—Joint tariff filed by Buckeye Pipe Line Company, I. C. C. No. 212	1417	667
6—Joint tariff filed by the Buckeye Pine Line Co., I. C. C. No. 209	1428	667
7—Joint tariff filed by the Prairie Pipe Line Company, I. C. C. No. 33	1442	667
Brief transcript of plaintiff's Exhibits 8, 9, 10, 12, 13, 14, being tariffs filed by the Prairie Pipe Line Company, and numbered respectively I. C. C. Nos. 30, 36, 58, 17, 48, and 43	1444	667
11—Joint tariff filed by South West Pennsylvania Pipe Lines, I. C. C. No. 76	1448	667
15—Joint tariff filed by Cumberland Pipe Line Co., I. C. C. No. 36	1450	667
16—Joint tariff filed by South West Pennsylvania Pipe Lines, I. C. C. No. 75	1452	667
17—Cancellation of joint tariff filed by South West Pennsylvania Pipe Lines, being Supplement No. 1 to I. C. C. No. 75.	1454	667

		Original.	Print.
Plaintiff's Exhibit No.	18—Joint tariff filed by South West Pennsylvania Pipe Lines, I. C. C. No. 85.....	1456	667
	19—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 158.....	1458	667
	20—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 149.....	1460	667
	21—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 156.....	1462	667
	22—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 154.....	1464	667
	23—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 138.....	1466	667
	24—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 143.....	1468	667
	25—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 144.....	1470	667
	26—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 148.....	1472	667
	27—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 145.....	1474	667
	28—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 146.....	1476	667
	29—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 135.....	1478	667
	30—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 134.....	1480	667
	31—Joint tariff filed by The Eureka Pipe Line Company, I. C. C. No. 142.....	1482	667
	32—Transcontinental map of various oil pipe lines.....	1484	667
	33—Local tariff of The Eureka Pipe Line Company, I. C. C. No. 160; P. S. C. W. Va. No. 8, effective September 20, 1919	1485	667
	34—Outline map of principal oil pipe lines in Pennsylvania..	1487	667

	Original.	Print.
Plaintiff's Exhibit No. 35—Local tariff of The Eureka Pipe Line Company, I. C. C. No. 151; P. S. C. W. Va. No. 6, effective December 1. 1917	1488	667
36—Form of purchase order	1490	667
37—Form of shipper's order	1491	667
38—Form of tender of shipment, original and dpulicate	1492	667
38*a*—Form of notice of tender of shipment	1493	667
39—Sample tender of shipment to Cumberland Pipe Line Company, original and duplicate.	1494	667
40—Sample notice of tender of shipment issued by Cumberland Pipe Line Company, Inc.	1495	667
41—Notice of tender of shipment from the Prairie Pipe Line Co.	1496	667
42—Table of credit balances on books of The Eureka Pipe Line Company at the close of each month during the year ending June 30, 1919	1497	667
43—Statement showing amount of certain grades of oil pumped by the various stations of The Eureka Pipe Line Company	1498	667
44—Table showing amounts of Somerset oil handled by The Eurena Pipe Line Company.	1499	667
45—Analysis of expenses of gathering and trunk lines of The Eureka Pipe Line Company for year ending June 30, 1919 (three sheets)	1500	668
53—Table showing proportion of The Eureka Pipe Line Company of the one per cent deductions on deliveries under I. C. C. tariffs	1503	671
54—Statement of receipts and deliveries and of over and short account of Pennsylvania grade oil handled by The Eureka Pipe Line Company for twelve months ending June 30, 1919	1504	672

	Original.	Print.
Plaintiff's Exhibit No. 56—Oil account of Cabell oil for twelve months ending June 30, 1919	1505	674
59—Table showing labilities, stocks, and surplus of Pennsylvania grade oil handled by The Eureka Pipe Line Company.	1506	676
62—Table showing liabilities, stocks, and surplus of Cabell oil	1507	677
65—Table showing consignors, consignees, destination, etc., of oil gathered by The Eureka Pipe Line Company in West Virgina and delivered by it to connecting carriers for further transportation outside of the State of West Virginia	1508	679
67—Table of gravity lines of The Eureka Pipe Line Company.	1509	680
68—Table of iron tankage of The Pipe Line Company	1510	680
78—Copy of assessment of property of The Eureka Pipe Line Company for the year 1919.	1511	681
80—Table showing division of transportation revenue of The Eureka Pipe Line Company	1515	686
81—Table showing certain deliveries of crude oil made by The Eureka Pipe Line Company for twelve months ending June 30, 1919	1516	686
82—Analysis of expenses of pipe lines from Hamlin to Braden and Eureka to Morgantown.	1517	686
83—Further analysis of expenses of The Eureka Pipe Line Company	1518	686
Defendants' Exhibit Purchase Order	1591	686
Defendants' Exhibit Division Order	1520	686
Defendants' Exhibit Transfer Order	1521	686
Defendants' Exhibits Hardy Nos. 1 to 22, inclusive—Tickets showing state of oil account of W. C. Hardy and others on books of The Eureka Pipe Line Co	1522	686
Final decree, dated September 8, 1920	1544	687
Opinion	1545	687
Certificate of clerk of circuit court of Kanawha County	1558	694

	Original.	Print.
Order allowing appeal of defendants to supreme court of appeals of the State of West Virginia	1559	695
Petition of the defendants for leave to appeal to the supreme court of appeals of West Virginia with assignments of error	1560	695
Order granting leave to defendants to move to reverse the decree of the circuit court of Kanawha County pronounced on September 8, 1920	1562	697
Defendants' notice of motion to reverse the decree of the circuit court of Kanawha County pronounced September 8, 1920	1563	698
Order entered October 6, 1920, granting leave to plaintiff to print record	1567	699
Order entered November 8, 1920, reciting argument and continuing hearing	1568	700
Order enered November 9, 1902, reciting hearing and declaring case submitted for decision	1568	701
Decree of supreme court of appeals, entered Novembr 26, 1920	1569	701
Opinion of supreme court of appeals	1570	702
Order entered November 30, 1920, directing in substance that the decree entered November 26, 1920, be suspended for a period of thirty days from that date, and in case of petition for a rehearing, until further order	1598	720
Order of supreme court of appeals entered January 12, 1921, denying application for rehearing and ordering that the decree entered November 26, 1920, be made absolute	1599	721
Petition for reargument and rehearing filed by plaintiff	1600	722
Order of the supreme court of appeals entered February 1, 1921, extending the execution of the final decree of the supreme court of appeals herein for ninety days from January 12, 1921, upon the execution of a bond	1627	737
Copy of bond filed by The Eureka Pipe Line Company as provided in said order of February 1, 1921	1628	738
Stipulation of counsel as to papers, testimony, exhibits, and documents to be omitted from transcript of record to take the place of a præcipe	1630	739
Petition for writ of error	1636	742
Assignments of error	1642	746
Order allowing writ of error	1655	753
Supersedeas bond	1657	754
Writ of error	1660	758
Citation	1663	759
Clerk's certificate	1665	760

1 RECORD.

THE STATE OF WEST VIRGINIA:

To the Sheriff of Kanawha County, Greeting:

We command you that you summon Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, if they be found within your bailiwick, to appear before the Judge of our Circuit Court for the County of Kanawha, at Rules to be held in the Clerk's office of said Court, on the first Monday in September, next, to answer a bill in chancery, exhibited against them in our said Court by The Eureka Pipe Line Company, a corporation, and have then and there this writ.

Witness, A. P. Hudson, Clerk of our said Court, at the Court House of said County, on the 26th day of August, 1919, and in the 57th year of the State.

A. P. HUDSON,
Clerk.

The following endorsements appear upon the back of said writ:

"No. 5434.

Kanawha Circuit Court, September Rules, 1919.

EUREKA PIPE LINE CO.

vs.

WALTER S. HALLANAN, State Tax Commissioner, et al.

Summons in Chancery and 2 Copies.

Executed the within process on the within named Walter S. Hallanan, State Tax Commissioner State of West Va. on the 27th day of August, 1919, by delivering to him in person a true copy thereof in Kanawha County, West Virginia.

S. B. JARRETT,
S. K. C.,
By J. L. CARNEY,
D. S. K. C.

Executed the within process on the within named E. T. England, Attorney General State of West Va. on the 27th day of August, 1919, by delivering to him in person a true copy thereof in Kanawha County, West Virginia.

S. B. JARRET,
S. K. C.,
By J. L. CARNEY,
D. S. K. C."

2 In the Circuit Court of Kanawha County, West Virginia.

In Chancery.

THE EUREKA PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, et als., Defendants.

3 *Bill of Complaint.*

In the Circuit Court of Kanawha County, in the State of West Virginia.

In Chancery.

THE EUREKA PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Defendants.

To the Honorable Henry D. Rummel, Judge of said Court:

The Bill of Complaint of The Eureka Pipe Line Company, a Corporation, Plaintiff, Exhibited Against Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Defendants, in said Court.

The Eureka Pipe Line Company, a corporation,—hereinafter called plaintiff,—shows unto your Honor and avers that it is
4 a corporation created, organized and existing under the laws of the State of West Virginia, and that its charter bears date December 22, 1890, and plaintiff is therein declared to be, from said date, until the 10th day of December, 1940, a corporation for the purposes set forth therein, and, as such corporation, it is engaged in the business of transporting and incidentally storing crude oil, as a common carrier thereof, for hire; and that plaintiff is, under the laws of the State of West Virginia and under the Act of Congress, and the several Amendments thereto Regulating Interstate Commerce, a common carrier of oil, and subject to said laws and to the valid rules and regulations promulgated thereunder. That the principal office of plaintiff is at Oil City, in the State of Pennsylvania,

and its principal place of business is within and its transportation system is wholly within the State of West Virginia.

That the defendant, Walter S. Hallanan, is a citizen of the State of West Virginia and resides therein at the City of Charleston, in Kanawha County, and is the State Tax Commissioner of the State of West Virginia, duly and regularly appointed to hold said office under and by virtue of the laws of the State of West Virginia, and that his office, as said State Tax Commissioner, is at the Capitol of said State in the City of Charleston, in said County of Kanawha, in said State of West Virginia. That, by virtue of his office as said State Tax Commissioner, it is his duty to see that the laws concerning the ascertainment, assessment and collection of all taxes and levies, in said State, are faithfully enforced; and, as such Commissioner, he is invested with full power and authority and it is made his duty to faithfully enforce an Act of the Legislature of West Virginia, Chapter 5 (House Bill No. 3) of the Acts of the Legislature of West Virginia, enacted at an extraordinary session thereof in the year 1919, and to prescribe forms for returns and assessments thereunder and to make, issue and put in force all necessary and needful rules and regulations for ascertaining and assessing the tax thereby imposed and of ascertaining and assessing the tax therein imposed, and it is by said Act his duty to proceed to collect such tax, so assessed thereunder, with the penalty in said Act provided, and to issue to the company paying the same a certificate of payment therefor; to which Act more particular reference will be hereafter made.

That defendant, E. T. England, is a citizen of and a resident in the State of West Virginia, and is the duly elected and qualified Attorney General of the State of West Virginia, under the Constitution and Laws thereof, and his office, as such Attorney General, is at the Capitol, in the City of Charleston, in the County of Kanawha, in said State of West Virginia, and by virtue of his said office, it is his duty to give his opinion and advice to said State Tax Commissioner and to consult with and advise the several Prosecuting Attorneys of said State, in matters relating to their official duties and to represent the State of West Virginia in any cause in which the State is interested and to otherwise institute, conduct and maintain all suits and proceedings for the protection of public rights and the enforcement of the laws of said State and especially those statutes which prescribe fines and penalties, including the aforesaid Chapter 5 of said Acts.

That said Chapter 5 (House Bill No. 3) of the Acts of the Legislature of West Virginia of the Extraordinary Session, 1919, is entitled:

"An act to levy a privilege tax on any person, firm or corporation engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the State Tax Commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the State Tax Commissioner hereunder."

And particular reference is made to said Act for all of the terms thereof and for the legal effect thereof and said statute will hereinafter be referred to as Transportation Tax Act.

6 That said Act purports to make it the duty of said State Tax Commissioner, and to invest him with the full power and authority, to ascertain and assess the amount of the tax provided therein, and to collect the same by judicial proceedings from every person, firm or corporation engaged in the State of West Virginia in the transportation of crude oil or petroleum by means of pipe lines for sale to consumers within or without the State, or use within or without the State in the making of any products derived therefrom, provided that such crude oil or petroleum is, by the entire system of such person, firm or corporation, transported a distance of 10 miles, or more; and said tax is fixed by said Act, to be paid to the State of West Virginia, as an annual privilege tax for engaging in the business of transporting crude oil or petroleum in said State, at two cents for each barrel of crude oil or petroleum as is so transported or conveyed within said State, by means of pipe lines, for sale to consumers within or without the State, or use within or without the State in the making of any products derived therefrom.

That said State Tax Commissioner, acting under the authority of and by virtue of said Tax Act and in the attempted performance of his apparent duty thereunder, has prescribed forms for returns and assessments thereunder and has made, issued and purported to put in force thereunder certain Rules and Regulations for ascertaining and assessing the tax therein imposed upon every company engaged in said State in the transportation of crude oil or petroleum, by means of pipe lines, within the expressed terms of said Act. The said Forms for Returns, Rules and Regulations, so prescribed and issued by said Tax Commissioner, are designated "Form 200—Tax Com. (July, 1919) State of West Virginia Privilege Tax Return (Required by Chapter 5, Acts of the Legislature, 1919, Extra Session)," and the same, and every part thereof, are filed herewith as part hereof, marked for identification Exhibit: "Form of Tax Return;" and the court's attention is directed to the construc-

7 tion placed up said Act by said Tax Commissioner, as shown therein and by the definitions and provisions thereon.

That said State Tax Commissioner has informed plaintiff that it is within the terms of said Transportation Tax Act and that it must comply with all of the terms thereof and must, before August 30, 1919, deliver to him a return in writing showing the quantity of crude oil or petroleum, produced both inside and outside West Virginia, and transportated or conveyed by plaintiff within the State of West Virginia during the fiscal year ending on July 1, 1919, such return to be signed and sworn to, as provided by said Act, and that such return must be upon the said form so prescribed by said State Tax Commissioner. That said State Tax Commissioner is so demanding of plaintiff that it file said return, duly signed and sworn to, showing said facts, in order that he may, and he intends promptly thereafter to, ascertain and assess upon and against plaintiff a tax of two

cents per barrel for each barrel of crude oil or petroleum transported or conveyed by plaintiff within the State of West Virginia during the fiscal year ending on July 1, 1919, whether produced within or without said State and whether transported within or without the State, and, after such ascertainment and assessment of such tax, said Tax Commissioner intends to collect the amount thereof from plaintiff, by judicial proceedings, and intends to collect from plaintiff a penalty of ten per cent of the total amount thereof, added thereto, if said tax, so assessed by him, is not voluntarily paid by plaintiff within the time provided by said Act for the payment thereof.

Plaintiff further avers that, in the event it fails or omits to file said return or fails to pay the tax which said State Tax Commissioner assesses upon plaintiff, under said Act, in accordance with the expressed terms thereof, it is the intention and purpose of said State Tax Commissioner to enforce the terms of said Act against plaintiff by appropriate judicial proceedings and by the collection of
8 the ten per cent penalty therein provided and by the enforcement of the fine or fines therein prescribed, and it is the intention and purpose of the defendant, E. T. England, the Attorney General of said State, and it is by law made part of his duty, to represent and assist said State Tax Commissioner in all judicial proceedings instituted for the enforcement of said Act against plaintiff and in the attempted collection of said tax and of said penalties from it and in the imposition of the fine or fines therein prescribed, for alleged violations thereof by plaintiff.

Plaintiff avers that said Transportation Tax Act, and every part thereof, is unconstitutional, illegal, invalid and void, and the defendants hereto have no lawful authority to enforce the said Act, or any provision thereof, in any manner against plaintiff, its agents, servants, property, or business.

In order to show to your Honor the extent, nature and character of its business of transporting crude oil and petroleum, by means of pipe lines, within the State of West Virginia and its rights and privileges under the Constitution and Laws of the United States of America and under the Constitution of the State of West Virginia, plaintiff avers the truth to be as follows:

About the year 1891, plaintiff began the construction of its pipe line system for the transportation, piping, shipping and incidentally storing crude oil or petroleum, for hire, and in acquiring and holding real estate, rights and easements therein and such other property as might be necessary and convenient for said purpose and in erecting, constructing, acquiring, operating and maintaining lines of pipes, tubing, tanks, stations and such other machinery and devices, including telegraph lines, as might be necessary or convenient for said purposes.

That plaintiff, from time to time, has extended its said pipe lines and constructed additional pumping stations, lines of pipe,
9 tanks, telegraph lines and other machinery, devices and arrangements as part of its entire system, so that, at the present time, its entire system of pipe lines, for the most part connected and comprising one system of transportation, aggregates about 4,300 miles in length. Said pipe lines vary in diameter from two inches to

twelve inches and said pipe line system is connected with necessary and adequate pumping stations, tankage and other equipment and devices necessary and convenient for the said purposes of plaintiff.

That said transportation plant of plaintiff is located in twenty-seven counties of West Virginia. Its pipe lines originate at a point on the boundary line between the States of West Virginia and Kentucky, on Tug River, and at several points on the boundary line between the States of West Virginia and Ohio, on the Ohio River, and at several points on the boundary line between the States of West Virginia and Pennsylvania, and terminate at points on the boundary line between the said States of West Virginia and Pennsylvania. Plaintiff also has a small line terminating on Tug River, at a point on the boundary line between the States of West Virginia and Kentucky. That the larger part of said plant has been in existence for more than twenty years and, from the beginning, said plant has been used, and is now used, in the transportation and incidental storage of crude oil or petroleum, for hire.

That practically all of the oil which has heretofore been transported through the pipe lines of Plaintiff and which, during the year ending July 1, 1919, was transported through its lines, and which is now being transported through its lines, is produced in and comes from the States of West Virginia, Pennsylvania, Ohio, Kentucky and Illinois, and from what is known as the Mid-Continent Field, which includes the States of Kansas, Oklahoma, and part of Texas.

That plaintiff was incorporated for the purpose of and its
10 plant was constructed for the purpose of, and has been used almost exclusively for transporting said oil, by means of its pipe lines and the pipe lines of connecting carriers, in interstate commerce, for delivery to refineries situated in the States of Pennsylvania, New Jersey and Maryland.

That all oil which is delivered to plaintiff and into its pipe line system, at the Kentucky State line, is delivered to it by the Cumberland Pipe Line Company, a corporation, a common carrier of oil under the laws of the State of Kentucky and the laws of the United States of America; and that all oil which is delivered to Plaintiff and into its pipe line system, at the Ohio State line, is delivered to it by the Buckeye Pipe Line Company, a corporation, a common carrier of oil under the laws of the State of Ohio and the laws of the United States of America; and that all oil which is delivered to plaintiff and into its pipe line system, at the Pennsylvania State line, is delivered to it by South West Pennsylvania Pipe Lines Company, a corporation, a common carrier of oil under the laws of the State of Pennsylvania and the laws of the United States of America.

That, at the State Line between Pennsylvania and West Virginia, where said oil flows from the pipes of Plaintiff into the lines of South West Pennsylvania Pipe Lines Company and Southern Pipe Line Company, respectively, there is no structural change in the pipe lines, nor are there pumping stations nor tanks at said points, but said oil flows continuously across said State line in an unbroken movement through continuous pipes and there is nothing at said points at said State line to show that said oil is passing from the pipes of Plaintiff into the pipes of said other companies. The said

pipes are continuous, but the ownership of Plaintiff's pipes terminates at said State line and the ownership of the pipes of Southern Pipe Line Company and South West Pennsylvania Pipe Lines Company, respectively, begins at said State line, where the pipes owned by plaintiff end. That, substantially, the situation described in
11 this paragraph exists in like manner at the points of connection of Plaintiff's lines with those of Cumberland Pipe Line Company, at the Kentucky State line, and at the points of connection of Plaintiff's lines with those of Buckeye Pipe Line Company, at the Ohio State line.

That the general movement of said oil through Plaintiff's lines is in an easterly and northerly direction through the State of West Virginia across the West Virginia-Pennsylvania State line to the State of Pennsylvania.

That Plaintiff's pipe line system is a part of an extensive system of pipe lines originating in the State of Texas, and extending eastward across Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio, West Virginia, Kentucky, Pennsylvania, and New Jersey, to points on Tide Water within the States of Maryland, Pennsylvania and New Jersey.

That Plaintiff's plant is an important and vital part of said interstate system, by reason of its strategic position and pumping and tankage facilities.

Plaintiff files herewith as part hereof marked Exhibit "First Map," a plat showing the approximate location of said extensive pipe line system, the starting points of the western connecting carriers, the converging of said entire system into and through Plaintiff's lines and station at the point marked "Morgantown" thereon, and the extension of said system, by connecting carriers to Tidewater, from which it will be seen that said system extends into and across as many as fifteen States, and Plaintiff avers that said system, including its own, is used largely in transporting crude oil from the points of production thereof, in the said several States, to the great refineries at Tide Water.

Plaintiff also files herewith as part hereof marked Exhibit "Second Map," a plat showing more in detail and on a larger scale
12 the general pipe line system of Plaintiff from its points of origin on the Kentucky State line and on the Ohio State line at the Ohio River, and at the Pennsylvania State line and connecting lines thereat of Southern Pipe Line Company, a corporation, a common carrier of oil under the laws of the State of Pennsylvania and the laws of the United States of America, and South West Pennsylvania Pipe Lines Company, projected to the City of Pittsburgh and vicinity, in the State of Pennsylvania, and to Tide Water through connecting lines and at points thereon shown.

That Plaintiff, being a common carrier, holds itself open to deliver oil which is properly tendered to it, to any consignee having facilities for receiving it, either directly or through the lines of connecting pipe line carriers.

That large quantities of oil, produced in States north and west of the State of West Virginia, are consigned by the owners thereof, from the lines of the initial carrier, by way of Plaintiff's lines, through connecting carriers, to points on Tide Water as aforesaid; also large quantities of oil produced in West Virginia are consigned in like manner. All oil transported by Plaintiff moves on tariffs, and the tariffs show exactly where the oil came from.

The oil transported by Plaintiff is collected in the field and tankage farms in others States, and also in West Virginia, and, when a sufficient amount for a shipment has been accumulated, the owner of the oil tenders such amount to an accessible pipe line company for shipment to a refinery, which is usually on the sea board, or in the vicinity of Pittsburgh, Pennsylvania. A receipt is given by the initial pipe line company for so many barrels of oil delivered to be shipped to the consignee, which is an accepted tender of shipment. There is no paper that moves along with the oil, like a railroad bill of lading. There is simply a paper which contains the tender and the acceptance on one page. The initial carrier retains one
13 copy and the shipper receives another copy. There is attached hereto, as part hereof, a sample form of said tender of shipment and said acceptance, marked Exhibit "Tender of Shipment and Acceptance." Said form covers the supposed case of a tender of 75,000 barrels of oil, to be shipped from sundry points in Kentucky, through plaintiff's lines across the State of West Virginia, by way of Morgantown, West Virginia, to Atlantic Refining Company at Philadelphia, Pennsylvania.

After the tender of shipment is made to the initial carrier, that company advises the various pipe line companies over whose lines the oil is going to move, as to the routing and division of the transportation charges. As the oil is actually delivered from one carrier to another, telegraphic advices are sent to the various connecting carriers, so that they may know that such oil is coming to their lines at some future date and on just what tariff it is moving. The division of the charges is made on the different tariffs. One carrier receives so many cents per barrel for transporting such oil over its lines, and other carriers, respectively, receive certain amounts for transporting such oil over their lines.

There is also attached hereto, as part hereof, marked Exhibit "Notice," sample of notice sent to each carrier, through whose lines the oil runs, after the tender of such shipment is made to the initial carrier. Such notice covers the shipment of the oil referred to in said tender of shipment and acceptance, and such notice of tender of shipment shows that such oil is consigned from points in Kentucky to Atlantic Refining Company, at Philadelphia. The transportation charge, upon the supposed date, is fifty cents per barrel from Kentucky to Philadelphia, and the division of said charge is shown on said notice.

When Plaintiff is the initial carrier, such tender of shipment is accepted by it, and notice of tender issued by it.

14 Plaintiff avers that it and its business is subject to the Constitution of the United States and to the Act of Congress and

the several amendments thereto which constitute a regulation of interstate commerce and Plaintiff, and its business of transporting oil across said several State lines, is subject to the jurisdiction of the Interstate Commerce Commission, created and existing under the laws of the United States, and is required to file with said Interstate Commerce Commission joint tariffs, showing the rates on which oil moves from various points, in connection with all connecting pipe line carriers from whom plaintiff receives or to whom it delivers oil, in such transportation, and Plaintiff is otherwise required by law to comply with the valid rules and regulations from time to time promulgated by said Interstate Commerce Commission governing the transportation of crude oil, passing at any time through Plaintiff's lines in interstate transportation.

Plaintiff further avers that it has in all respects complied with the several acts of Congress governing the regulation of interstate transportation of oil and has at all times complied with the rules and regulations of said Interstate Commerce Commission from time to time promulgated and in effect governing the interstate transportation of oil and the filing of joint tariffs for the same.

That, for many years past, plaintiff has been receiving, and at the present time is receiving, crude oil from said Cumberland Pipe Line Company at the Kentucky State line and from said Buckeye Pipe Line Company at several points on the Ohio State line and from South West Pennsylvania Pipe Lines Company, at the Pennsylvania State line, all common carriers of oil by means of pipes, and has been, and is now transporting said oil across the State of West Virginia and delivering the same to connecting pipe lines of other companies who are common carriers of oil, for further and continuous transportation to the State of Pennsylvania and to Tide Water, in the States of Maryland, Pennsylvania and New Jersey.

15 During years past, plaintiff has also received, and is now receiving, oil from wells situated in West Virginia, from the producers thereof or from the owners thereof in actual possession of said oil, and transports the same, in interstate commerce, through its lines and system to the lines of connecting carriers for further, continuous transportation, across the State of Pennsylvania or to refineries near Pittsburgh and Philadelphia, in the State of Pennsylvania. Plaintiff also receives oil at Cabin Creek, in Kanawha County, and transports the same through plaintiff's lines and system to the lines and system of Southern Pipe Line Company at the Pennsylvania State line, or to the lines and systems of Pure Oil Pipe Line Company, which companies, in turn, transport the same across the State of Pennsylvania or to refineries at Marcus Hook or Philadelphia, Pennsylvania.

Until recently, plaintiff had no delivery point to any refinery located within the State of West Virginia, except at one refinery in the City of Parkersburg, County of Wood, State of West Virginia. In addition to said last mentioned delivery point, plaintiff now delivers a certain quantity of oil to a refinery at St. Marys, County of Pleasants, State of West Virginia, and to a refinery at Falling Rock, in the County of Kanawha, State of West Virginia, and said three last

mentioned places are the only delivery points on plaintiff's lines within the State of West Virginia, other than at Littleton, in Wetzel County, West Virginia, and at Morgantown, in Monongalia County, West Virginia, at which two last mentioned points plaintiff delivers oil to connecting common carriers of oil for the sole purpose of transportation across the State line to refineries located within the State of Pennsylvania.

That, during the year ending July 1, 1919, all oil which plaintiff received from Cumberland Pipe Line Company at the Kentucky State line or from Buckeye Pipe Line Company at the Ohio State line or from South West Pennsylvania Pipe Lines Company at the Pennsylvania State line, was received by plaintiff for transportation
16 across the State of West Virginia and delivered by plaintiff, at the Pennsylvania State line, to connecting pipe line carriers for further, continuous transportation across and through the State of Pennsylvania for delivery to points wholly outside the State of West Virginia, and no part of said oil was delivered within the State of West Virginia.

That all oil which plaintiff delivered, during the year ending July 1, 1919, to the West Virginia Pipe Line Company, at Littleton, in Wetzel County, State of West Virginia, or to Pure Oil Pipe Line Company, at Morgantown, in Monongalia County, State of West Virginia, was delivered by plaintiff to said respective companies for immediate and continuous transportation through their respective systems, across said Pennsylvania State line to points within the State of Pennsylvania.

That all oil which was received by plaintiff during year ending July 1, 1919, other than that delivered to the three refineries in West Virginia, as aforesaid, and other than that delivered to said West Virginia Pipe Line Company and said Pure Oil Pipe Line Company, was transported by plaintiff and delivered by it to said South West Pennsylvania Pipe Lines Company or said Southern Pipe Line Company for further transportation, as hereinabove shown.

Plaintiff avers that the foregoing description of the receipts, runs and deliveries of oil shows generally the flow of oil, both that produced within and that produced without the State of West Virginia, through plaintiff's pipe line system, through and across the State of West Virginia, to its main delivery points at the Pennsylvania State line, and the character of plaintiff's business in years past and at the present time.

Plaintiff further avers that, in addition to the tariffs filed by it with the Interstate Commerce Commission, showing the rates
17 on which oil moves from various points, by way of its lines, all connecting pipe line companies are required to file with said Commission tariffs showing the rates on which oil moves from various points, where any part of said movement is over or through plaintiff's lines, and said tariffs cover not only the charges of the initial carrier, but also the charges of all other carriers through whose pipes the oil passes. From whatever point the oil originates, there is a tariff giving the through rate to the ultimate destination. No matter whether the oil originates in Kentucky, Indiana, Illinois, Kansas,

Oklahoma, Texas, West Virginia, or elsewhere, the shipper is quoted a rate from the point on the pipe line at which he delivers the oil, to the refinery in any state at which the oil is to be delivered. Sometimes the freight or transportation charge is prepaid, and, therefore, collect-d by the initial carrier, but most of the time it is collected by the last carrier, on delivery. In either case, the carrier which collects the transportation charges accounts to the various connecting carriers through whose pipes the oil has passed, in just the same way that connecting carriers collect and account for interstate shipments of merchandise or passengers.

Plaintiff files herewith, as part hereof, bound together as one exhibit and marked for identification "Eureka Pipe Line Company Interstate Commerce Commission Tariffs, copies of all of the present tariffs now on file with and approved by said Interstate Commerce Commission and in full force and effect, governing rates for the transportation by plaintiff of oil transported by it, in interstate commerce, over its own lines and the lines of connecting pipe line carriers, at any time between the 1st day of January, 1918, and the first day of July, 1919, which exhibit also includes copies of all joint tariffs filed by other connecting pipe line companies, on which oil was transported by plaintiff, through its lines, during said last mentioned period. Each specific tariff is also identified by the Interstate Commerce Commission number thereof in the upper right hand corner, on the first page of each tariff.

18 To illustrate a shipment of 75,000 barrels of oil, by a consignor from several points in the State of Kentucky to Philadelphia, Pennsylvania, under Interstate Commerce Commission Tariff No. 36, included in plaintiff's exhibit of tariffs, Cumberland Pipe Line Company accepts the shipment, upon a tender of shipment and acceptance, filed herewith, and quotes the rate of fifty cents to Philadelphia, Pennsylvania. The Cumberland Pipe Line Company then notifies each of said carriers through whose lines the oil will be transported, viz., The Eureka Pipe Line Company and Southern Pipe Line Company, by the notice of tender of shipment filed herewith. The oil is then moved through the lines of Cumberland Pipe Line Company to the State line of West Virginia, and, at said State line the oil passes into the lines of plaintiff and by it is transported through West Virginia, by way of its Morgantown station to the State line between the States of West Virginia and Pennsylvania, at which point the oil passes into the lines of Southern Pipe Line Company and is transported by it to Philadelphia (Point Breeze Station), Pennsylvania, for delivery to the consignee at that point. The division of the through rate is shown on notice of tender of shipment.

Making reference to the oil actually transported and delivered by plaintiff during the year beginning July 1, 1918, and ending June 30, 1919, both dates inclusive, plaintiff avers that it transported and delivered, through its pipe line system, during said year 22,531,-315.06 barrels of crude oil. Of the oil so transported during said year, 1,239,099.55 barrels was crude oil produced in West Virginia, run into plaintiff's lines and transported and delivered by it to points

within the State of West Virginia, for use within the State of West Virginia.

Of the total amount of oil so transported and delivered during said year, 16,015,736.04 barrels was crude oil produced outside the State of West Virginia run into plaintiffs lines from said connecting carriers, at the Kentucky State line, at the Ohio State line and at the Pennsylvania State line, respectively, was transported by
19 plaintiff in continuous transit across the State of West Virginia, and delivered by it at the Pennsylvania State line for further continuous and uninterrupted transportation to points of destination, all outside the State of West Virginia and all on Interstate Commerce Commission tariffs hereinabove filed, and none of said oil last mentioned was produced in West Virginia, or was delivered or used in West Virginia, but was received by plaintiff from points outside said State, transported by it across said State and delivered by it to connecting carriers for further immediate transportation beyond the limits of said State.

Of the said total amount of oil delivered during said year 4,368,718.41 barrels was oil produced within the State of West Virginia and run into plaintiff's lines for transportation and transported by it across said State and delivered by it at the Pennsylvania State line to other connecting carriers for further continuous transportation outside the State of West Virginia, all under the proper Interstate Commerce Commission tariffs filed herewith.

Of the said oil so delivered by plaintiff during said year, 638,590.79 barrels, was oil produced in West Virginia and run into plaintiff's lines for transportation by it and delivered by it within the State of West Virginia to said Pure Oil Pipe Line Company, or said West Virginia Pipe Line Company, respectively, common carriers of oil, for further continuous and uninterrupted transportation by said connecting carriers to points wholly outside the State of West Virginia, and so actually transported by said connecting carriers.

The remaining oil delivered by plaintiff during said year, 269,170.27 barrels, was oil produced in West Virginia, received by it at Cabin Creek Station therein, transported by plaintiff and delivered by it to connecting carriers for further continuous transportation outside the State of West Virginia and delivery at points on
20 the Delaware River, in the State of Pennsylvania, under the proper Interstate Commerce Commission tariffs filed herewith.

To summarize the deliveries of oil for the year ending June 30, 1919:

		Number of barrels.
A.	Oil produced in West Virginia, transported and delivered therein for use therein.....	1,239,099.55
B.	Oil produced wholly outside West Virginia, received by The Eureka Pipe Line Company, at several State lines, under Interstate Commerce Commission tariffs, and transported thereunder by plaintiff across the State of West Virginia	

and delivered by it, at the Pennsylvania State line, to connecting carriers for further, continuous transportation outside of West Virginia	16,015,736.04
C. Oil produced in West Virginia, run by The Eureka Pipe Line Company, transported by it under Interstate Commerce Commission tariffs, and delivered by it at the Pennsylvania State line, to connecting carriers, for further, continuous transportation outside West Virginia	4,368,718.41
D. Oil produced in West Virginia, transported by The Eureka Company in interstate commerce, and delivered by it to connecting carriers, for further, continuous transportation outside West Virginia	638,590.79
E. Oil produced in West Virginia, received by The Eureka Company, under Interstate Commerce Commission tariffs, and transported by it thereunder across the State of West Virginia and delivered by it to connecting carriers for further, continuous transportation outside of West Virginia	269,170.27
Total oil delivered	22,531,315.06

21 That any return filed by plaintiff with said Tax Commissioner under said Transportation Tax Act, will show the amount of oil transported by it, in West Virginia, during the said year, to be 22,531,315.06 barrels, and that about ninety-five per cent thereof was transported in interstate commerce.

Said pretended Transportation Tax Act provides that no corporation, after the 1st day of July, 1919, shall engage in or continue in the business of transportation of crude oil or petroleum, by means of pipe lines, without the payment of the tax therein imposed, but said Act further provides that nothing therein contained shall apply to any corporation engaged in said business where the crude oil or petroleum is, by the entire system of such corporation, transported a distance of less than ten miles; and also provides that every person, firm or corporation engaged in the transportation of crude oil or petroleum, by means of pipe lines, whether for sale to consumers within or without the State, or whether for use within or without the State, shall pay to the State, annually, two (2) cents for each barrel of crude oil or petroleum so transported or conveyed within the State, provided, however, that only one such tax, annually, shall be required to be paid.

Plaintiff avers that said Act directs said Tax Commissioner to ascertain and assess the said tax upon the company making the return and to notify it of the amount of such tax, and said Act

provides that such ascertainment of the tax shall be final and conclusive unless appealed from as therein provided. Said Act further provides that, if any company fail or refuse to make such return, the Tax Commissioner shall proceed to obtain the facts and information required to be furnished by such return and authorizes him to examine the books, records and papers of any such company and to take the evidence of persons, pertinent to the subject of inquiry, and, thereafter, said Tax Commissioner is directed to proceed to ascertain and assess the said tax upon said Company and to notify it of the amount thereof and his act, as to the amount of
22 said assessment, is made final as to any company which refuses to make such return.

Plaintiff further avers that said State Tax Commissioner, acting under the pretended authority of said Act, if plaintiff makes such return, will thereupon ascertain and assess upon and against plaintiff a tax of two (2) cents for each of said 22,531,315.06 barrels of crude oil so transportated and conveyed by plaintiff, within the State of West Virginia, during the year beginning July 1, 1918, as an annual tax for plaintiff engaging in its said transportation business in said State, for one year, which tax, so assessed, will amount to approximately $450,626 30. If plaintiff fails or refuses to make such return, said State Tax Commissioner, under said Act, will proceed to obtain the facts and information required to be furnished by such return and will thereafter proceed to ascerain and assess said tax upon plaintiff and plaintiff avers that said Tax Commissioner will proceed to assess upon plaintiff a tax amounting to approximately the same sum, to-wit, $450,626.30, and, by said Act, the action of said Tax Commissioner in so ascertaining and assessing said tax and notifying plaintiff thereof are declared to be final and to deprive plaintiff of any right of appeal therefrom.

That, after said Tax Commissioner assesses said tax upon plaintiff and notifies it of the amount thereof, he will under said Act, proceed to collect the same from plaintiff by judicial proceedings, as directed in Section 7 of said Act, together with the penalty of ten per centum added thereto, and the Attorney General of said State, the defendant herein, will assist said Tax Commissioner in all proceedings to collect the said tax and said penalty and said officers will also endeavor to have plaintiff adjudged liable to the fines in said Act prescribed for failure to comply therewith. Section 9 of said Act provides that any company engaging or continuing in the aforesaid business without first having secured a license, as
23 therein provided, shall be liable to a fine of not less than $1,000.00 nor more than $10,000.00.

Plaintiff is not a producer or purchaser of oil and does not own the oil in its custody or transported by it, but it transports the same, for hire, at the published tariff rates, and has no interest in said oil so transported, except a lien thereon to secure its transportation and incidental storage charges.

Referring to the general scheme of taxation of the State of West Virginia, at the time said transportation tax act was enacted, and at the present time, plaintiff avers that the laws of West Virginia

provide for the assessment, annually, of all property, real and personal, situate therein, at its true and actual value, and the payment of an equal and uniform tax based upon such valuation, and is known as a general property tax, and the fiscal year, in said State, is by statute declared to commence on the first day of July and end on the thirtieth day of June.

Said laws also provide for the payment, for each fiscal year, beginning on July 1st, by each domestic corporation, of an annual license tax measured by and based upon the authorized capital stock of said corporation and is known as a corporation license tax on its charter.

Said laws, by statute enacted in the year 1915, also provide for the payment by every corporation of an annual excise tax for the privilege of carrying on or doing business in said State, equivalent to one-half of one per centum upon the entire net income of such company, received by it from all sources during the year, on business transacted and capital invested in said State, a return to be filed before March 1st of each year showing said net income for the preceding year ending December 31st, and said excise statute provides that the tax therein imposed or prescribed, when paid, shall authorize the company making payment to engage in the
24 business authorized by its charter, and the Tax Commissioner is commanded to issue to such company paying such tax, at the time of payment, a certificate of payment for the proper fiscal year.

Said laws, by statute enacted in the year 1919, Extra Session, Chapter 7, also provide that, in addition to the last mentioned excise tax, every corporation engaged in business in said State, shall pay an annual special excise tax for the privilege of carrying on or doing business in said State, equivalent to one-fourth of one per centum of the entire net income of such company, received by it from all sources during the year, on business transacted and capital invested in said State, and that such tax shall be levied for the fiscal year 1919, and succeeding years.

Said laws also provide that there shall be paid, by all public service corporations, of whom plaintiff is one, a special license fee, in addition to all others, to be fixed by the Auditor according to the value of the property of such public service corporation, as ascertained by the last preceding assessment thereof, and apportioned among them upon the basis of such valuation, so as to produce a revenue of $60,000.00 per annum, and to be paid on or before the twentieth day of January in each year.

Plaintiff directs the attention of the court to said general and corporation tax laws of said State for all of the terms and provisions thereof.

That, under and by virtue of said scheme of taxation and under the laws of West Virginia providing therefor, plaintiff has at all times paid all taxes assessed by the State of West Virginia, or any political sub-division thereof, against it, its property, its charter or capital stock, its net income and its public service corporation fees, above mentioned, from and after the date of the enactment of said laws, respectively.

25 Under the general property tax law of said State, in addition to a general property tax paid by plaintiff on all of its property in West Virginia, from the beginning to and including the year 1906, plaintiff avers that its property and transportation system within the State of West Virginia has been by the State of West Virginia assessed annually for the years next hereinafter mentioned, at the valuations next hereinafter mentioned, and said State, based upon said respective valuations, has assessed for said years upon and against plaintiff and its said property the following general property tax, all of which has been paid by plaintiff to the State of West Virginia, from year to year, as assessed, that is to say:

Year.	Assessed valuation.	General property tax assessed and paid.
1907	$14,610,630.00	$95,834.45
1908	13,758,553.00	94,936.29
1909	18,000,000.00	124,679.24
1910	20,000,000.00	136,136.08
1911	22,000,000.00	150,300.88
1912	21,000,000.00	146,387.77
1913	22,000,000.00	180,355.82
1914	21,000,000.00	182,310.08
1915	18,000,000.00	180,985.93
1916	15,000,000.00	152,746.29
1917	15,000,000.00	182,463.43
1918	14,500,000.00	176,723.80

That the total cost of plaintiff's pipe line system, and of its property in West Virginia, as of December 31, 1918, was about $10,240,000.00, and, on June 30, 1919, was about the sum of $10,500,000.00, the latter being about the cost thereof, at the present time.

Plaintiff further shows that it never had invested in its transportation system, from the beginning to the 31st day of December, 1918, a sum in excess of $10,300,000.00, and that the actual cost of said plant, to said date, was not in excess of said sum, and that the
26 actual investment in said plant, at the present time, after deducting accrued depreciation, is not in excess of $8,000,000.00.

In addition to all other license charter taxes paid by plaintiff to the State of West Virginia prior to the year 1907, the said State of West Virginia has assessed upon and against plaintiff a license or charter tax for the following years and in the following sums, all of which have been paid by plaintiff, from year to year, to the State of West Virginia, that is to say:

Year.	Charter or capital-stock tax.
1907	$725.00
1908	845.83
1909	725.00
1910	725.00
1911	725.00
1912	725.00
1913	725.00
1914	725.00
1915	940.00
1916	940.00
1917	940.00
1918	940.00

That, beginning with the year 1913, there has been assessed by the State of West Virginia upon and against plaintiff, its property and business, the said public service corporation fee and the same has been paid by plaintiff to said State of West Virginia, as follows:

Year.	Public service corporation fee.
1913	$4,235.00
1914	3,990.00
1915	3,420.00
1916	2,850.00
1917	2,700.00
1918	2,610.00

Under the said excise or net income tax law, enacted in the year 1915, and under the said amendment thereto enacted in
27 the year 1919, adding the extra one-fourth per centum, the State of West Virginia has assessed upon and against plaintiff and it has paid to the State of West Virginia, for the following years, the following excise taxes, that is to say:

Year.	Excise tax upon net income.
1916	$4,961.23
1917	6,610.35
1918	8,339.12

Plaintiff further avers that all of the aforesaid State tax laws are now in full force and effect, and, for the year 1919, plaintiff will be by said State assessed, as heretofore, with taxes thereunder, and it will pay said respective taxes, so assessed, to said State.

Plaintiff avers that, beginning with the year 1907, when, under the laws of said State, the Board of Public Works began to determine, and has since determined, the valuation of plaintiff's said

transportation system for purposes of taxation, the said State of West Virginia has valued plaintiff's said plant, property and system, from the year 1907, to the year 1918, both years inclusive, at more than double the actual cost of said plant and at more than double the actual sum invested by plaintiff, for said respective years, in said plant, and that, in placing said valuations upon plaintiff's said property, under the general property tax law of said State, the said State of West Virginia and its Board of Public Works, has considered the gross income and the net income of plaintiff, from its transportation business for each year from the year 1906 to the year 1918, both years inclusive, and the said State has placed said large valuations, from year to year, upon plaintiff's said property because of plaintiff's gross income therefrom and its net income therefrom for the years mentioned and said valuations, respectively, were determined and fixed by said State largely upon said gross income and said net income for said years.

28 Plaintiff avers that, under the aforesaid tax laws of said State, the several tax years do not coincide, but overlap in such a confused manner that the taxes assessed upon and paid by plaintiff thereunder, in effect, constitute a doubling and trebling of taxes paid by plaintiff to said State, for each calendar year, upon and against its property, and the value thereof, its business and the income therefrom, its franchises and privileges.

That, under said excise tax law enacted in the year 1915, and amended in the year 1919, plaintiff has paid to said State the sum of $8,339.12, and the State Tax Commissioner has issued to it a certificate of payment thereof, for the fiscal year 1919, and, under said law, plaintiff is expressly authorized to engage in the business of transporting oil within said State, for said year, which tax, so paid, is by said statute declared to be for the privilege of carrying on its said business.

Plaintiff avers that, while said Transportation Tax Act, on its face, purports to be a privilege tax, it is as to plaintiff, in fact, a tax upon freight in transit, after having been delivered to a common carrier for transportation, mostly in interstate commerce, and constitutes and is a tax upon the freight, that is, crude oil, transported during last year, namely, for the year ending July 1, 1919, and did not become effective until after all of said oil, transported during said year, had been delivered, and the charges therefor, at published rates, paid by the shippers thereof, and plaintiff's lien thereon lost, and plaintiff has no way of including said tax as an item of expense for said year, to be paid out of the charges for transporting said oil; and the payment of said tax, so measured, is required by said Act to entitle plaintiff to engage in or continue in said business during the coming year.

That the course of plaintiff's business is to transport oil, by pipe lines, from other States and from wells and tanks in West
29 Virginia, by means of connecting carriers, in the constant, continuous and uninterrupted flow thereof, at the directions of shippers, across said several State lines, to points of destination in other States, and the current of oil thus existing is a current of com-

merce among the States, and said Act provides that such commerce shall be taxed at the rate therein prescribed, and the said Tax Commissioner has so interpreted and intends so to enforce said Act against plaintiff.

Plaintiff avers that its total net income from all sources, for the year ending June 30, 1919, was $640,768.22, and that its total net income from all sources for the first six months of the calendar year 1919, is $199,683.79, and present business conditions indicate and plaintiff therefore avers that, for the year ending December 31, 1919, its total net income from all sources will be considerably less than $450,000.00.

Plaintiff avers that the proposed tax of two (2) cents per barrel upon each barrel of crude oil transported by plaintiff during the year ending July 1, 1919, which said State Tax Commissioner proposes and intends to assess upon and against plaintiff, under said transportation tax law, will greatly exceed plaintiff's total net income for the calendar year 1919.

Plaintiff further avers that, of the 22,531,315.06 barrels of oil transported by it during the year ending June 30, 1919, its gross receipts from about 7,820,964.62 barrels thereof, or about thirty-four per centum of the whole thereof, were a small fraction over two cents per barrel, for transporting the same, and that said proposed transportation tax, if enforced against plaintiff, will take from it practically its gross receipts for transporting such part of said oil, and, as to a considerable portion thereof, much more than its gross receipts for transporting such portion thereof.

Plaintiff avers that it is not engaged in the business of transporting natural gas or the products or distillates of crude oil or petroleum, or natural gas, or both; but plaintiff transports by pipe lines, ranging in length from a few feet to about five and one-half miles in length, gas purchased by it and used by it for heat, light and fuel in and about its pumping stations, which number about sixty-eight. These are service lines and are wholly disconnected from each other and are not an entire system. By one other gas line, less than twelve miles in length, plaintiff transports gas, produced in the State of Pennsylvania, purchased by it at the well, and delivered to it by pipe line, at the West Virginia-Pennsylvania State line, and then conveyed through said line, in continuous flow from the well to its Morgantown Station and used by it for heat, light and fuel, the total amount thereof, for the year ending June 30, 1919, being 126,982,000 cubic feet. That said current of gas, in said line, is commerce among the States, and its transportation by plaintiff is interstate commerce. That said Tax Act is void and ineffective as to plaintiff's gas lines and gas transportation, upon the same grounds herein set forth as to its oil business.

Plaintiff further avers that said Transportation Tax Act, and every part of said Act, is unconstitutional, illegal and void, and directly, and by its necessary operation and effect, violates the rights of plaintiff under the Constitution of the United States of America, in this:

(*a*) That said Act and the enforcement thereof directly and immediately burdens, hampers, and constitutes a restriction of and a regulation of, commerce among the several States in which plaintiff is engaged, in violation of Section 8, of Article I thereof, and of the several Acts of Congress regulating such commerce.

(*b*) That said Act constitutes and is a laying, by the State of West Virginia, without the consent of the Congress, of imposts and duties on imports and exports (not absolutely necessary for executing inspection laws) in violation of Section 10 of Article I thereof.

(*c*) That said Act, and the necessary effect of the enforce-
31 ment thereof, will deprive plaintiff of its property without due process of law, in violation of Article XIV of the Amendments thereto.

(*d*) That said Act, and the necessary effect of the enforcement thereof, will deny plaintiff the equal protection of the laws, in violation of Article XIV of the Amendments thereto.

That said Act directly, and by its necessary operation and effect, violates the rights of plaintiff under the Constitution of the State of West Virginia, in this:

(*a*) That said Act directly violates Section 1 of Article X thereof, prescribing that taxation shall be equal and uniform throughout the State, and that all property shall be taxed in proportion to its value, to be ascertained as directed by law, and that no one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value, and the taxation of privileges and franchises of persons and corporations shall be by uniform and equal laws; and plaintiff avers that said Act constitutes a tax upon its property, its privileges and franchises which is not equal and is not uniform, and is not in proportion to the value of its property and constitutes a tax upon its property and business higher than any other species of property of equal value. Said Act contains no provision for a new company starting in the business of transporting oil, to pay any tax for engaging or continuing therein, or to obtain a license therefor.

(*b*) That said Act directly violates Section 39 of Article VII thereof, prescribing that the Legislature shall not (except as therein noted) pass any local or special law, and shall provide, by general laws, for all cases for which provisions can be so made, and that in no case shall a special act be passed, where a general law would be proper, and can be made applicable to the case. Said Act exempts therefrom, and provides it shall not apply to, any person, firm or corporation engaged in said business, where the crude oil, petroleum or distillates thereof, or natural gas, is by the entire system
32 of such person, firm or corporation transported a distance of less than ten miles. All oil transported by plaintiff is transported by it a distance of more than ten miles; and, therefore, said Act constitutes special and unequal taxation, and discriminates against plaintiff.

(*c*) That said Act imposes excessive fines, namely, as much as $10,000.00, and the penalties therein are excessive and not proportioned to the character and degree of the offences therein purported to be created, in violation of Section 5 of Article III thereof.

(*d*) That the enforcement of said Act will constitute a taking of plaintiff's property for public use, without just compensation and without payment, or security of payment, therefor, and without compensation to plaintiff, ascertained by an impartial jury of twelve freeholders, in violation of Section 9 of Article III thereof.

(*e*) That the enforcement of said Act will deprive plaintiff of its property without due process of law, in violation of Section 10 of Article III thereof.

(*f*) That said Act purports to close the courts of the State to plaintiff in violation of Section 17 of Article III thereof, prescribing that the courts of the State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law, and that justice shall be administered without sale, denial or delay.

That said Act, and every part thereof, is otherwise, in many respects, in violation of the Constitution of the United States and of the State of West Virginia and is discriminatory, indefinite, uncertain, ambiguous and contradictory in its terms.

That said Act prescribes fines and penalties for failure to pay said tax and to secure the license thereunder, but fails to
33 provide how or from whom such license can be obtained and does not specify for what particular year the tax assessed thereunder and paid shall entitle a company to engage in business, free from such fines and penalties.

That said Act is null and void as to the intrastate business of plaintiff, for the reason that it is null and void as to its interstate business and plaintiff avers that the Legislature of West Virginia, by said Act, did not intend that the same should be effective or valid as to intrastate business only, and did not intend thereby to impose a tax upon the intrastate transportation of oil only.

Plaintiff further avers that the said Act and the necessary effect thereof, in its enforcement, is to confiscate all of its total net income, annually, from all sources, and to confiscate a very large part of its gross income, annually, from the transportation of oil in the regular course of its business, as hereinabove shown, in violation of its rights under the Constitution and laws of the United States and under the Constitution of the State of West Virginia.

That the said Act and the necessary effect thereof, in its enforcement against plaintiff, is to destroy its said business of transporting oil among the several States, confiscate its net earnings from its entire business, and render practically valueless its entire investment in said plant, all to its irreparable injury.

That, if plaintiff is required, under said Act, to pay into the State Treasury the tax which said State Tax Commissioner will assess upon it thereunder, there is no provision in any law of the State

of West Virginia by which said sum so paid in, or any part thereof, can be recovered by plaintiff, of or from said State, in the event the courts adjudge said Act, or any part thereof, to be invalid,
34 save and except by a special appropriation by the Legislature of said State by a duly enacted law therefor, out of public funds; neither can plaintiff, except in like manner, recover from said State any penalties or fines imposed upon it and paid by it, under said Act.

That said Act constitutes a cloud upon plaintiff's property, business and franchises and the enforcement thereof against it will require plaintiff to defend a multiplicity of actions, suits and judicial proceedings, instituted from year to year by said Tax Commissioner thereunder to collect said tax and penalties, and plaintiff will be required to defend numerous proceedings instituted by said Commissioner and the said Attorney General, seeking to have it held liable for the fines therein prescribed; and any judgment or decree obtained against plaintiff, for said tax or penalties, or any fine imposed upon it, will constitute and become liens upon plaintiff's said property, all to its great injury.

That plaintiff has the right to engage in its said business without complying with any part of said Act and has the right to invoke the aid of a court of equity to protect it, and its property, business and franchises, its agents, servants and employees, from the operation of said Act, and the taxes, penalties and fines therein provided.

Plaintiff avers that it does not have a plain, adequate or complete remedy at law, and, being remediless in the premises, prays that the defendant, Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and all persons acting under his authority or direction, be perpetually inhibited, enjoined and restrained from enforcing, or attempting to enforce, in any manner, the said Transportation Tax Act, or any part thereof, against plaintiff and
35 from requiring it to make any return or report to him of the amount of oil or gas transported by it, and from assessing upon or against it any tax thereunder, and from collecting or proceeding to collect from it, in any manner, any tax thereunder, or any penalty or fine therein prescribed, and that the defendant E. T. England, Attorney General of the State of West Virginia, and all persons acting under his authority, advice or direction, be perpetually inhibited, enjoined and restrained from enforcing, or attempting to enforce, any and every part of said Act, against plaintiff and from proceeding to have plaintiff, its property, agents or employees, held liable for any tax, penalty or any fine therein prescribed, and that said Act be decreed herein to be void as to plaintiff, its property, franchises and business; and for such other, further and general relief as it is entitled to in the premises and as to equity appertains. And thus it will ever pray.

Eureka Pipe Line Co
" " Co.
Walter S. Hallanan, State
Tax Commissioner, et al,

Exhibit:- "Form of Tax Return",
(5) Filed with Bill of Complaint

P. 37

THIS RETURN IS TO BE FORWARDED TO THE STATE TAX COMMISSIONER, CHARLESTON, WEST VIRGINIA.

FOR USE OF BUREAU ONLY
Return received.....
Number.....
Verified by.....
Assessed by.....

FORM 200—TAX COM.
(JULY, 1919)

STATE OF WEST VIRGINIA

Pipe Line Privilege Tax Return

(REQUIRED BY CHAPTER 5, ACTS OF THE LEGISLATURE OF 1919, EXTRA SESSION)

THIS RETURN MUST BE IN THE HANDS OF THE STATE TAX COMMISSIONER, CHARLESTON, WEST VIRGINIA, ON OR BEFORE AUGUST 30, 1919.

FOR USE OF BUREAU ONLY
Amount of tax assessed $.....
For year ended.....
Journal page.....
Company notified.....

RETURN FOR FISCAL YEAR JULY 1, 1918—JULY 1, 1919.

By....., whose principal office or place of
(Name of person, firm or corporation)

business is at.....
(Street and Number) (City or Town) (State)

and the place at which are kept the books of account, papers and other data from which this return is prepared is.....
(City or Town)

.....
(State)

Section 4 of the law provides that "the state tax commissioner shall ascertain and assess the tax upon the company making a return, and shall notify it of the amount of such tax by notice deposited in the postoffice addressed to such company at its principal office or place of business."

Give below the exact address to which official notices of assessment, if any, should be forwarded: (Give city, etc. but not company's name)

.....

There should appear in each blank space provided for information SOME NOTATION to indicate that the information desired has not been overlooked. The word "NONE" may be used where that word expresses the FACTS. Where sufficient space is not provided for the entry of the information required, lists containing full information in the form indicated should be marked in accordance with the particular item and attached hereto; when so attached they become parts of this return.

IMPORTANT—Read this form and all instructions carefully and fill in supplementary statement before making entries in return proper. Totals in supplementary statement should agree with totals in return.

1. The word "company", as used in this blank, is understood to include any person, firm, partnership, corporation, joint-stock company or association liable for the privilege tax in connection with which the information requested below is required.

2. The word "transported" and the words "transported or conveyed" are understood as having reference to oil, gas, etc., transported within the State of West Virginia, by means of pipe lines, for sale to consumers within or without the state, or use by the reporting company or others within or without the state in the making of any products derived therefrom.

3. Total mileage of all pipe lines owned, leased or operated by the reporting company, including trunk, gathering and distributing lines, IN ALL STATES. ..... Miles.
Total mileage of all pipe lines owned, leased or operated by the reporting company, including trunk, gathering and distributing lines, IN WEST VIRGINIA. .....Miles, of which.....miles were used in the transportation of oil, gas, etc., during the year for which return is made.

QUANTITIES TRANSPORTED WITHIN WEST VIRGINIA BY MEANS OF PIPE LINES, AND AMOUNT OF TAX MEASURED THEREBY.

	Quantity	Rate	Amount of Tax	
			Dollars	Cents
4. Total quantity of crude oil or petroleum transported or conveyed within West Virginia.....	..... Bbls.	2 cts. per barrel	$.....	.....
5. Total quantity of the products and distillates of crude oil or petroleum transported or conveyed within West Virginia.....	..... Bbls.	2 cts. per barrel	$.....	.....
6. Total quantity of natural gas transported or conveyed within West Virginia.....	..... M. Cu. Ft.	⅓ of 1c. per M. cu. ft.	$.....	.....

7. Total amount of tax assessable.....

SUPPLEMENTARY STATEMENT

4. CRUDE OIL OR PETROLEUM TRANSPORTED WITHIN WEST VIRGINIA BY MEANS OF PIPE LINES.

(a)	Quantity produced by the reporting company within West Virginia	.....Bbls.
(b)	Quantity purchased by the reporting company from others within West Virginia	.....Bbls.
(c)	Quantity transported or conveyed by the reporting company within West Virginia, for others, production inside West Virginia only	.....Bbls.
(d)	Quantity produced or purchased by the reporting company in other states and transported or conveyed by it into or through West Virginia	.....Bbls.
(e)	Quantity transported or conveyed by the reporting company into or through West Virginia, for others, production outside West Virginia only	.....Bbls.
(f)	Total quantity transported or conveyed by the reporting company within West Virginia	.....Bbls.
(g)	Are the barrels above reported, barrels of 42 gallons each? .....; if not, give the number of gallons per barrel	

5. PRODUCTS AND DISTILLATES OF CRUDE OIL OR PETROLEUM TRANSPORTED WITHIN WEST VIRGINIA BY MEANS OF PIPE LINES.

(a)	Quantity produced by the reporting company within West Virginia	.....Bbls.
(b)	Quantity purchased by the reporting company from others within West Virginia	.....Bbls
(c)	Quantity transported or conveyed by the reporting company within West Virginia, for others, production inside West Virginia only	.....Bbls.
(d)	Quantity produced or purchased by the reporting company in other states and transported or conveyed by it into or through West Virginia	.....Bbls.
(e)	Quantity transported or conveyed by the reporting company into or through West Virginia, for others, production outside West Virginia only	.....Bbls.
(f)	Total quantity transported or conveyed by the reporting company within West Virginia	.....Bbls.
(g)	Are the barrels above reported, barrels of 42 gallons each? .....; if not, give the number of gallons per barrel	

6. NATURAL GAS TRANSPORTED WITHIN WEST VIRGINIA BY MEANS OF PIPE LINES.

(a)	Quantity produced by the reporting company within West Virginia	.....M. Cu. Ft.
(b)	Quantity purchased by the reporting company from others within West Virginia	.....M. Cu. Ft.
(c)	Quantity transported or conveyed by the reporting company within West Virginia, for others, production inside West Virginia only	.....M. Cu. Ft.
(d)	Quantity produced or purchased by the reporting company in other states and transported or conveyed by it into or through West Virginia	.....M. Cu. Ft.
(e)	Quantity transported or conveyed by the reporting company into or through West Virginia, for others, production outside West Virginia only	.....M. Cu. Ft.
(f)	Total quantity transported or conveyed by the reporting company within West Virginia	.....M. Cu. Ft.

I, (a)..... (b).....

of the company whose return showing the quantities of crude oil or petroleum, or the products and distillates thereof, and natural gas, transported by means of pipe lines within the State of West Virginia during the year ending July 1, 1919 is as above set forth, on my oath say that the above return was prepared from the original books, records and papers of the reporting company; that I am thoroughly familiar with the business of the reporting company; and that the items entered in the foregoing return and supplementary statement, and in any additional list or lists attached to and made a part of this return and numbered consecutively from ..... to ....., are, to the best of my knowledge and belief, and from the best information I have been able to obtain, true and correct in each and every particular.

Sworn to and subscribed before me this..... day of..... ....., 19.....

(c) .....

Seal of Officer Taking Affidavit.

..... (*Notary Public.*)

(d) .....

My commission expires on the ..... day of ....., 19..

(a) Maker of return. (b) Insert here "owner," "partner," "president," "vice-president" or "treasurer," as the case may be. (c) Maker of return will sign here. (d) Insert here "owner," "partner," "president," "vice-president" or "treasurer," as the case may be.

To Persons, Firms and Corporations Engaged in the Transportation of Oil and Gas Within the State of West Virginia, by Means of Pipe Lines:

Section 3, Chapter 5, Acts Extra Session of the Legislature of 1919, invests full power and authority in the State Tax Commissioner, and makes it his duty, to prescribe forms for returns and assessments, and to make, issue and put in force all necessary and needful rules and regulations for the ascertainment and assessment of the privilege tax imposed upon persons, firms and corporations by said chapter. In pursuance of this provision, there is appended hereto, together with the law itself, such rulings, as, at this time, appear to be necessary and proper.

The form of return is also prescribed. As this is the first tax of the kind imposed by the Legislature of this State, the form of return may contemplate a more comprehensive showing than that which may be prescribed for subsequent years. However, the Tax Commissioner, at this time, believes the information asked for is essential to a just and uniform assessment against those persons, firms and corporations which are subject to the tax imposed, and respondents are expected to supply all information asked for, if available. Should it be impossible to furnish any particular information asked for, respondents must so state. There should appear in each blank space provided for information SOME NOTATION to indicate that the information desired has not been overlooked. The word "NONE" may be used where that word expresses the FACTS.

Respectfully,

Charleston, W. Va., June 30, 1919. .W. S. HALLANAN, State Tax Commissioner.

THE LAW—Chapter 5, Acts Extraordinary Session of the Legislature of 1919, State of West Virginia.

[Passed March 31, 1919. In effect ninety days from passage. Approved by the Governor April 1, 1919.]

AN ACT to levy a privilege tax on any person, firm or corporation engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the State Tax Commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the State Tax Commissioner hereunder.

Be it enacted by the Legislature of West Virginia:

Section 1. No person, firm or corporation, hereinafter called company, after the first day of July, one thousand nine hundred and nineteen, shall engage in or continue in the business of the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, without the payment of an annual privilege tax hereby imposed for engaging in such business; provided, however, that nothing contained in this act shall apply to any person, firm or corporation engaged in the business aforesaid where the crude oil, petroleum or distillates thereof, or natural gas, is by the entire system of such person, firm or corporation, transported a distance of less than ten miles.

Sec. 2. Every person, firm and corporation engaged in this state in the transportation of either crude oil or petroleum, or the products and distillates thereof, or of natural gas, or both, by means of pipe lines for sale to consumers within or without the state, or use within or without the state in the making of any products derived therefrom, shall pay to the state, as an annual privilege tax for engaging in such business in the state, two cents for each barrel of crude oil or petroleum, or the distillates thereof, and one-third of one cent for each thousand cubic feet of such natural gas as is so transported or conveyed within this state. Provided, that only one such tax, annually, shall be required to be so paid.

Sec. 3. Every person, firm or corporation liable to tax imposed by this act, shall, within sixty days after the first day of July, one thousand nine hundred and nineteen, and within sixty days after the first day of July in each year thereafter, deliver to the State Tax Commissioner a return in writing showing the quantity of crude oil or petroleum, or the distillates thereof, or of natural gas transported or conveyed within this state during the fiscal year ending on the first day of July next preceding. Such return shall be signed and sworn to by the person making the same for himself or a partnership, and by the president, vice-president or other principal accounting officer making the same for a corporation, which return shall be in the form prescribed by the State Tax Commissioner. The State Tax Commissioner is hereby invested with full power and authority and it is hereby made his duty to prescribe forms for returns and assessments and to make, issue and put in force all necessary and needful rules and regulations for ascertaining and assessing the tax hereby imposed upon every company.

Sec. 4. The State Tax Commissioner shall ascertain and assess the tax upon the company making a return, and shall notify it of the amount of such tax by notice deposited in the post office addressed to such company at its principal office or place of business. Such ascertainment of the tax shall be final and conclusive, unless the same be appealed from in the manner following within thirty days after such notice is so deposited. If any company fail or refuse to make return, the State Tax Commissioner shall proceed, in such manner as may be proper, to obtain the facts and information required to be furnished by such return; and to this end he may, by himself or his duly appointed agent, make examination of the books, records and papers of any such company, and may take the evidence, on oath, of any person who he may believe shall be in possession of facts or information pertinent to the subject of inquiry, which oath he or the agent so appointed by him may administer. As soon as possible after procuring such information as he may be able to do with respect to any company failing or refusing to make a return, the State Tax Commissioner shall proceed to ascertain and assess the tax upon such company, and shall notify it of the amount thereof as hereinbefore provided. And his act shall be final as to any company which refused to make a return.

Sec. 5. If any such company, making a return as provided by this act, feels aggrieved by the assessment so made upon it for any year by the State Tax Commissioner, it may apply to the Board of Public Works by petition in writing, within thirty days after the notice is deposited as provided in the preceding section, for a hearing and a correction of the amount of the tax so assessed upon it by the State Tax Commissioner, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. The board shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the board shall notify the petitioner of the time and place fixed for such hearing. After such hearing the board may make such order in the matter as may appear to them just and lawful, and shall furnish a copy of such order to the petitioner.

Sec. 6. No injunction shall be awarded by any court or judge to restrain the collection of all or any part of the taxes imposed and assessed under this act, except upon the ground that the assessment thereof was in violation of the constitution of the United States, or of this state; or, that the same were fraudulently assessed; or, that there was a mistake made in the amount of taxes assessed; and in case of a mistake no such injunction shall be awarded, unless application shall be first made to the Board of Public Works to correct the alleged mistake, and the board shall refuse to do so, which fact shall be stated in the bill, or unless the complainant pay into the treasury of the state all taxes appearing by the bill of complaint to be owing.

Sec. 7. Every company so assessed with taxes shall pay the same into the state treasury within sixty days after the date of the mailing of the notice of the amount thereof, or within thirty days after notification of the amount thereof, when ascertained and assessed by the Board of Public Works on appeal. All taxes assessed under provisions of this act against any such company shall constitute a debt to the state, and may be collected by action of assumpsit or appropriate judicial proceeding, which remedy shall be in addition to all other existing remedies for the collection of taxes. It shall be the duty of the State Tax Commis-

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sioner to proceed to collect such taxes with a penalty of ten per centum [illegible] Commissioner shall issue to the company paying the same a certificate of payment for the proper fiscal year.

Sec. 8. Any person required or authorized by law to make, sign or verify any return by this act, who makes any false or fraudulent return or statement with intent to defraud the state or defeat or evade the payment of the tax, or any part thereof, imposed by this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars, nor more than five thousand dollars, to which fine shall be added the costs of prosecution.

Sec. 9. Any person engaging or continuing in the business aforesaid without having first secured a license, as hereinbefore provided, shall be liable to a fine of not less than one thousand dollars nor more than ten thousand dollars.

Sec. 10. All acts and parts of acts inconsistent herewith are hereby repealed.

RULES AND REGULATIONS CONCERNING THE PRIVILEGE TAX

—Required of Persons, Firms and Corporations—

For the Privilege of Transporting or Conveying Oil, Gas, etc., By Means of Pipe Lines Owned, Leased or Operated.

STATE OF WEST VIRGINIA, OFFICE OF STATE TAX COMMISSIONER, Charleston, June 30, 1919.

1. DEFINITIONS

1-a. "Commissioner," as used in these rules, shall mean the State Tax Commissioner of the State of West Virginia.

1-b. "Company," as used in these rules, shall include all persons, firms, partnerships, corporations, joint-stock companies and associations liable for the privilege tax.

1-c. "Oil or gas," as used in these rules, shall include crude oil or petroleum, or the products and distillates thereof, and natural gas.

1-d. The "entire system" of a company shall be understood to embrace all pipe lines used in the transportation of oil or gas, whether owned, leased or operated and including trunk, gathering and distributing lines.

2. GENERAL PROVISIONS

2-a. The adoption of these rules shall not preclude the Commissioner from revoking or amending same, in whole or in part, or from requiring additional information or supplemental or amended returns.

2-b. These rules shall not in any way relieve any company from any of its duties under the laws of the State of West Virginia.

2-c. Each rule issued by the Commissioner in connection with the privilege tax is to be considered and treated by the reporting company as a ruling of the Commissioner until revoked or superseded.

3. THE PRIVILEGE TAX

3-a. The "privilege tax," as used in these rules, shall be understood to mean the privilege tax upon persons, firms and corporations imposed by Chapter 5, Acts Extraordinary Session of the Legislature of 1919. Said tax is construed as being for the particular privilege of transporting or conveying oil or gas, or both, within the State of West Virginia, for sale to consumers within or without the state, or use by the reporting company or others within or without the state in the making of any products derived therefrom, by means of pipe lines, owned, leased or operated the aggregate length of which, including trunk, gathering and and distributing lines, is ten miles or more, the amount of such tax to be the equivalence of two cents for each barrel of oil or petroleum, or the products and distillates thereof, and one-third of one cent for each thousand cubic feet of natural gas, so transported or conveyed.

4. THE MEASURE FOR THE TAX

4-a. The quantity of oil and gas to be used as the measure for the privilege tax against a particular company shall be that quantity which has, but once, passed through the owned, leased or operated pipe lines of that company within the State of West Virginia during the year for which return is required, for sale to consumers within or without the state, or use by the reporting company or others within or without the state in the making of any products derived therefrom.

5. WHO SUBJECT TO PAY TAX

5-a. Every person, firm, partnership, corporation, joint-stock company andassociation which, during the year for which return is required, transported or conveyed within the State of West Virginia crude oil or petroleum, or the products and distillates thereof, or natural gas, or both, by means of pipe lines owned, leased or operated the aggregate length of which, including trunk, gathering and distributing lines, was ten miles or more is subject to pay the privilege tax.

6. WHO EXEMPT FROM PAYMENT OF TAX

6-a. Persons, etc., transporting oil or gas within the State of West Virginia during the year for which return is required by means of pipe lines owned, leased or operated the aggregate length of which, including trunk, gathering and distributing lines, was less than ten miles, are exempt under section one of the law.

7. WHO TO MAKE RETURNS

7-a. Every person, firm, partnership, corporation, joint-stock company and association engaged in the transportation of oil or gas within the State of West Virginia, by means of pipe lines owned, leased or operated is liable for the filing of returns under the privilege tax law, regardless of whether the mileage of its entire system is less or more than ten miles.

7-b. Companies whose entire system of pipe lines is less than ten miles in length, and, therefore, exempt from payment of the privilege tax by the provision contained in section one of the law shall, by affidavit, at the request of the Commissioner, establish their right to the exemption provided, in which case it will not be sufficient to merely declare that they are exempt, but they must show the mileage of their entire system. A satisfactory return from such companies may be made on the prescribed form (Form 200) by simply filling in the name of the company, answering Question 3, leaving Questions 4, 5, 6 and 7 blank and swearing to the return as thus made.

7-c. Subsidiary Companies.—Every company liable for the privilege tax, regardless of its relation to another company, is held to be a separate and distinct entity, and, unless it comes within the class of companies specifically exempted by section one of the law, must make a separate and distinct return, complete in every detail.

8. TIME FOR FILING RETURNS

8-a. Section 3 provides that all companies liable to the privilege tax shall, within sixty days after the 1st day of July, 1919, and within sixty days from the first day of July in each year thereafter, deliver its return in writing to the State Tax Commissioner.

8-b. The commissioner is not authorized to extend the time for filing returns.

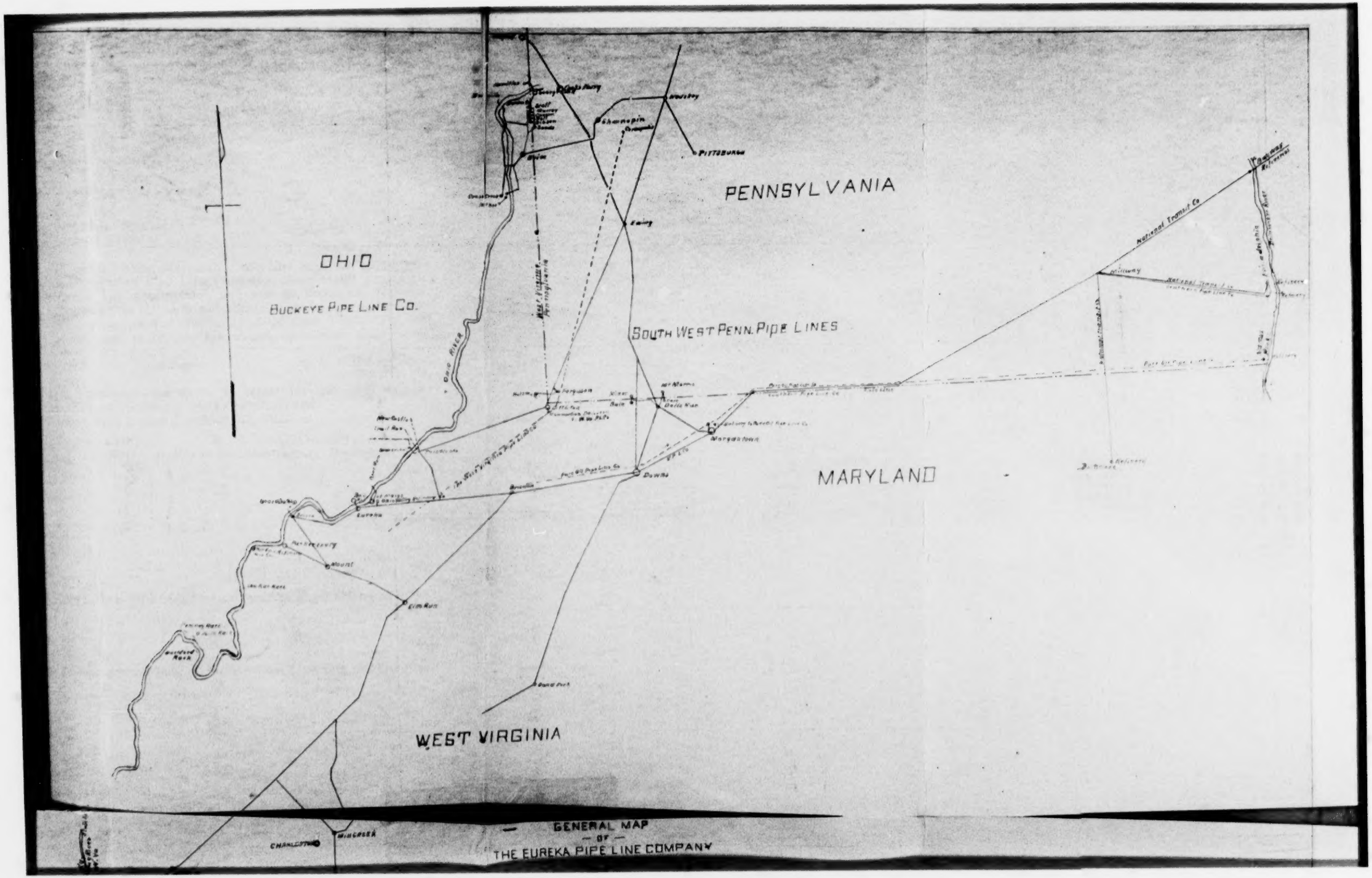
8-c. If a return is made and placed in the United States mails, properly addressed, and postage paid, in ample time, in due course of mails, to reach the office of the Commissioner on or before August 30th, and should the return not be actually received until subsequent to that date, it will be considered and treated as having been filed within the prescribed time.

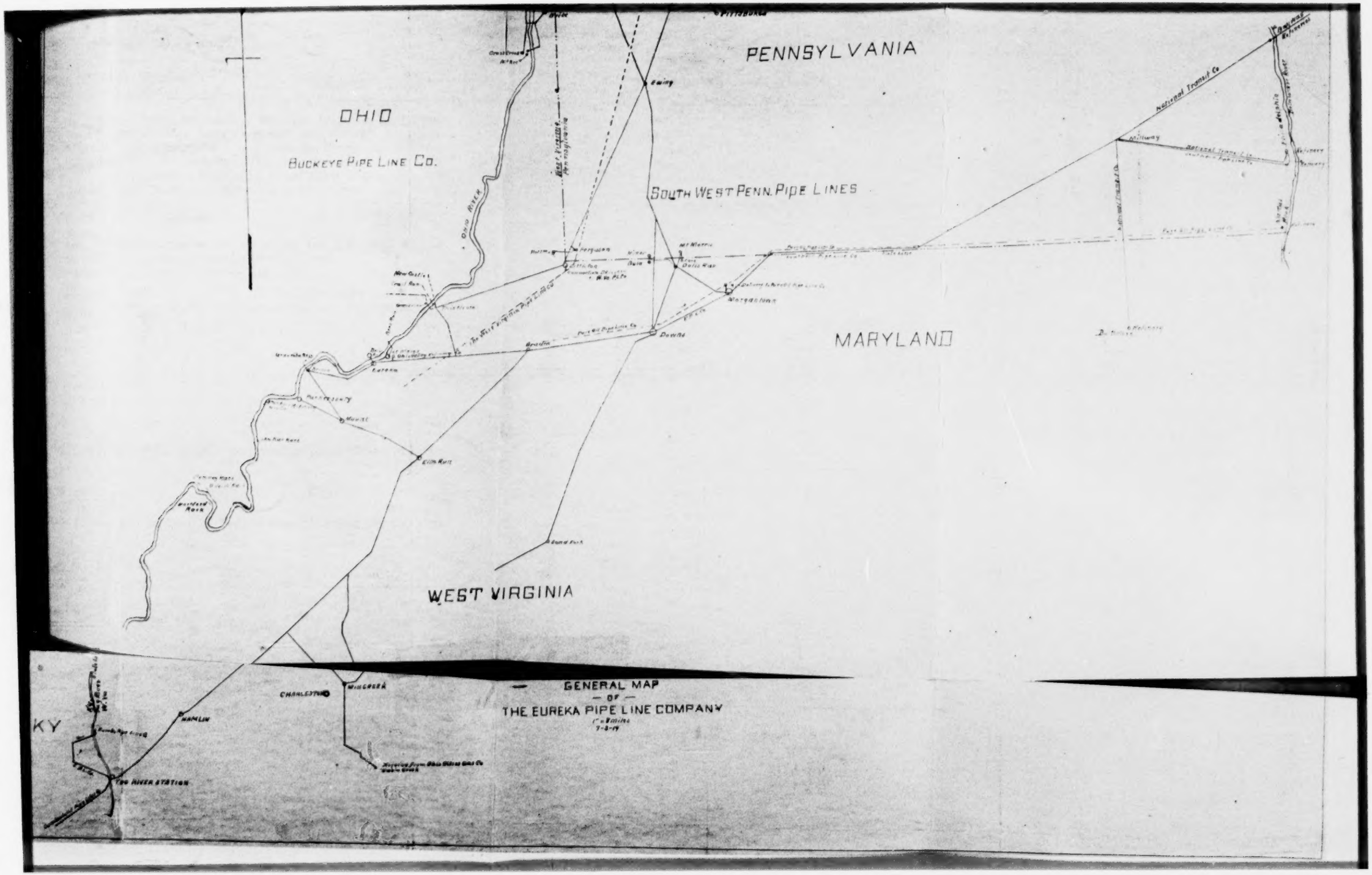
9. MANNER IN WHICH RETURNS ARE TO BE MADE

9-a. Blank forms, etc.—Under the authority conferred by the act, forms of return have been prescribed. Failure on the part of any company liable to the privilege tax to receive a prescribed blank form will not excuse it from making the return required by law, or relieve it from any penalties for failure to make the return in the prescribed time. Companies not supplied with the proper forms for making the return should make application therefor to the Commissioner in ample time to have its return prepared, verified and filed on or before August 30th. Each corporation should carefully prepare its return so as to fully and clearly set forth the data therein called for.

9-b. The books of a company are assumed to show the facts as to the quantities of oil or gas transported. Hence they will be taken as a guide in determining the quantities to use as a measure for the privilege tax.

W. S. HALLANAN, State Tax Commissioner.


PENNSYLVANIA
OHIO
BUCKEYE PIPE LINE CO.
SOUTH WEST PENN. PIPE LINES
MARYLAND
WEST VIRGINIA
Pittsburgh
Ewing
Shamokin
Dawes
Elm Run
Mount
Eureka
Morgantown
Mc Norma
Delta Mar
Ohio River
Monongahela River
National Transit Co
Railway
CHARLESTON
GENERAL MAP
OF
THE EUREKA PIPE LINE COMPANY


PENNSYLVANIA
OHIO
BUCKEYE PIPE LINE CO.
SOUTH WEST PENN. PIPE LINES
MARYLAND
WEST VIRGINIA
KY
CHARLESTON
HAMLIN
GENERAL MAP
— OF —
THE EUREKA PIPE LINE COMPANY

Witness the corporate name and corporate seal of The Eureka Pipe Line Company affixed hereto by E. R. Shepard, its Vice President.

[Corporate Seal.] THE EUREKA PIPE LINE COMPANY,
By E. R. SHEPARD,
Vice President.

A. B. FLEMING,
CHARLES POWELL,
KEMBLE WHITE,
Counsel for Plaintiff.

STATE OF PENNSYLVANIA,
County of Venango, to-wit:

E. R. Shepard, being duly sworn, says that he is the Vice President of The Eureka Pipe Line Company, the plaintiff named in the foregoing bill of complaint, and that he knows the contents thereof; that the facts and allegations therein contained are
36 true, except such as are therein stated upon information and belief, and, as to such allegations, he believes them to be true.

E. R. SHEPARD.

Taken, subscribed and sworn to before me this 14th day of August, 1919, as witness my hand and official seal.
My commission expires February 5th, 1921.

[Notary's Seal.] W. R. DAUGHERTY,
Notary Public of Venango County, Pennsylvania.

(Here follows form of tax return, marked pages 37 and 38.)

(Here follows general map of Eureka Pipe Line Co., marked page 39.)

[Map marked page 39 endorsed:] Copy. Eureka Pipe Line Co. vs. Walter S. Hallanan, State Tax Commissioner, et al. Exhibit "Second Map." Filed with the Bill of Complaint.

40 To Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia:

You, and each of you, will take notice that the undersigned, The Eureka Pipe Line Company, a corporation, will on Tuesday, the 26th day of August, 1919, at eleven o'clock, A. M., of said day, or as soon thereafter as the matter may be conveniently heard, move the Circuit Court of Kanawha County, West Virginia, or, if said Court be not in session, the undersigned will at said time move the Honorable Henry D. Rummel, Judge of said Circuit Court, in chambers, in the vacation of said Court, at the City of Charleston, County of Kanawha, State of West Virginia, for a temporary injunction and restraining order against you, the said Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and all persons acting under your authority or direction, inhibiting and restraining you and all such persons from enforcing, or attempting to enforce, in any manner, that certain Act of the Legislature of West Virginia, Chapter 5 (House Bill No. 3) Extraordinary Session of the Legislature of West Virginia for the year 1919, or any part of said Act, against the undersigned, and from requiring it to make any return or report to said State Tax Commissioner of the amount of oil or gas transported by the undersigned, and from assessing upon or against it any tax under said Act, and from collecting, or proceeding to collect, from the undersigned, in any manner, any tax under said Act, or any penalty or fine therein prescribed, and inhibiting, enjoining and restraining you, the said E. T. England, Attorney General of the State of West Virginia, and all persons acting under your authority, advice or direction from enforcing, or attempting to enforce, any and every part of said Act, against the undersigned, and from proceeding to have the undersigned, its property, agents or employees held liable for any tax, penalty or any fine in said Act prescribed.

The said motion for said injunction and restraining order will be based upon the bill of complaint of the undersigned, duly verified by affidavit, and upon the exhibits therewith filed.

At which time and place you, and each of you, may attend, if you be so advised.

THE EUREKA PIPE LINE COMPANY,

By

A. B. FLEMING,
CHARLES POWELL,
KEMBLE WHITE,
Its Counsel.

(The foregoing writing bears the following endorsement upon the back thereof:)

"Notice of Motion for Temporary Injunction."

"Executed the within process on the within named Walter S. Hallanan and E. T. England on the 25th day of Aug., 1919, by delivering to each of them in person a true copy thereof in Kanawha County, West Virginia.

S. B. JARRETT,
S. K. C.,
By J. L. CARNEY,
D. S. K. C."

41 In the Circuit Court of Kanawha County, in the State of West Virginia.

In Chancery.

THE EUREKA PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Defendants.

The Joint and Separate Demurrer and Answer of Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, to the Bill in Chancery Exhibited Against Them by the Eureka Pipe Line Company, a Corporation.

To the Honorable H. D. Rummel, Judge of said Court:

These defendants, Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, demur to the complainant's bill of complaint, and each and every part thereof, filed against them in the above entitled cause, and for grounds of demurrer say that said bill is not sufficient in law or in equity to justify the relief therein
42 prayed, or any relief, and without waiving said demurrer, but relying and insisting thereon, for answer to said bill of complaint, or to so much thereof as they are advised it is necessary or material for them to answer, answering, say:

These defendants admit that the plaintiff, The Eureka Pipe Line Company, is a corporation created, organized and existing under the laws of the State of West Virginia, for the purposes set forth in its charter, and that its charter bears date the 22d day of December, 1890, and that its principal office is at Oil City, in the State of Pennsylvania, and its principal place of business is within the State of West Virginia; and that it is engaged in the business of transporting and storing crude oil, and is a common carrier of crude oil, for hire under the Act of Congress and the several Amendments thereto regulating Interstate Commerce. These defendants do not admit that said plaintiff is a common carrier of oil under the laws of the State of West Virginia; and upon information and belief, deny that said

plaintiff is a common carrier of crude oil or petroleum, under the laws of West Virginia. These defendants aver the fact to be that said plaintiff was incorporated for the purposes and with the powers set forth and defined in its Certificate of Incorporation, and fixed thereby, being the following:

"for the purpose of transporting, piping, shipping and storing petroleum and other mineral oils; of purchasing, leasing and otherwise acquiring, developing, holding, selling and disposing of real estate and other property, which may be necessary or convenient for the purpose of its organization and business, and of erecting, constructing, acquiring, operating and maintaining a line or lines of pipe, tubing, tanks, offices, stations and such other machinery and devices or arrangements, including telegraph lines, as may be necessary for the purpose of transporting, piping, shipping and storing petroleum or other mineral oils; and the transaction of its business, with the right to have and enjoy all the rights, powers, privileges and franchises granted and conferred upon corporations organized for said purpose by the laws of West Virginia."

43 These defendants here file a duly certified copy of the Certificate of Incorporation of said corporation, together with a duly certified copy of the Certificate of Increase of Capital Stock of said corporation, as "Defendants' Exhibit No. 1," and ask that the same may be taken and read as a part of this answer.

These defendants admit that the defendant, Walter S. Hallanan, is a citizen of the State of West Virginia, and resides therein at the city of Charleston, in Kanawha County, and is the State Tax Commissioner of the State of West Virginia, and that his office, as such State Tax Commissioner, is at the capital of said State, in the City of Charleston, in the said County of Kanawha, in the said State of West Virginia; and that the defendant, E. T. England, is a citizen and resident of the State of West Virginia, and is the Attorney General of the State of West Virginia, and that his office, as such Attorney General, is at the capitol of said State in the City of Charleston, in the said County of Kanawha, in the said State of West Virginia; and that the said Walter S. Hallanan and the said E. T. England, as such officers, respectively, are charged with the respective duties averred in said bill of complaint.

These defendants admit that Chapter 5 (House Bill No. 3) of the Acts of the Legislature of West Virginia, of the Extraordinary Session of 1919, is entitled:

"An Act to levy a privilege tax on any person, firm or corporation, engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the state tax commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the state tax commissioner hereunder."

These defendants aver that said statute was duly and regularly enacted and passed by the Legislature of West Virginia on March 31,

1919, and became effective ninety days after its passage, and
44 was duly and regularly approved by the Governor of the
State of West Virginia, April 1, 1919, and was, and is, in all respects, a duly enacted and valid law of the State of West Virginia, and here refer thereto for the terms and provisions thereof.

These defendants admit that the defendant, Walter S. Hallanan, as such State Tax Commissioner, acting under the Authority of, and by virtue of, said Act, has heretofore prescribed forms for returns and assessments under said Act to be made by persons, firms or corporations subject to such tax, and has made, issued and put in force thereunder certain Rules and Regulations for ascertaining and assessing the tax therein imposed upon every company engaged in said State in the transportation of crude oil or petroleum, by means of pipe lines, within the express terms of said Act; but these defendants do not admit the correctness of the interpretation sought to be placed thereon by the plaintiff in the said bill of complaint. These defendants aver that said Forms, Rules and Regulations apply to all persons, firms and corporations subject to the provisions of said Act; and these defendants further aver that the Act aforesaid and the said Forms, Rules and Regulations are in writing and speak for themselves, and are filled with, and as part of, said bill of complaint, marked Exhibit "Form of Tax Return"; and these defendants are advised that said Act and said Forms, Rules and Regulations are, in all respects, lawful and valid, and aver that such Forms of Returns and Rules and Regulations were, and are, proper, and conform to, and are justified by, the terms and provisions of said Act.

These defendants admit that said defendant, Walter S. Hallanan, as such State Tax Comissioner, has informed plaintiff that it is
within the terms of said Transportation Tax Act, and that
45 it must comply with all the terms thereof, and as such State
Tax Commissioner demanded of plaintiff that it deliver to, and file with, him a Return in writing under said Act in accordance with said Forms, Rules and Regulations, showing the quantity of crude oil or petroleum transported or conveyed by plaintiff within the State of West Virginia during the fiscal year ended on July 1, 1919, duly signed and sworn to, in order that he may ascertain and assess upon and against the plaintiff a tax of two cents per barrel for each and very barrel of forty-two gallons each of crude oil or petroleum transported or conveyed by means of pipe lines by plaintiff within the State of West Virginia, during the fiscal year ended on July 1, 1919. These defendants aver that said plaintiff is within the terms of said Transportation Tax Act, and is subject to the privilege tax provided for in said Act, and that the crude oil or petroleum transported by said plaintiff within the State of West Virginia is, by the entire system of said plaintiff, transported a distance of ten miles and more. These defendants do not admit but deny, the correctness of the interpretation and construction sought to be placed upon said Act by the plaintiff in its bill of complaint, and deny that the said State Tax Commissioner intends to assess upon

and against, and collect from, the plaintiff "A tax of two cents per barrel for each barrel of crude oil or petroleum transported or conveyed by plaintiff within the State of West Virginia, during the fiscal year ending on July 1, 1919, whether produced within or without said State, and whether transported within or without the State"; and these defendants, and each of them, admit that it is their intention to take all proper steps authorized by law and devolving upon them, or either of them, as officers of the State of West Virginia, for the purpose of requiring such Return to be made and such tax to be ascertained and paid; but these defendants, and each of them, state and aver that, pending this litigation

46 and an adjudication determining the validity of said Act, they, nor either of them, have any intention or expectation of attempting to collect or enforce any penalties or fines against the plaintiff, or any other person, firm or corporation, under said Act, for failure to make returns or to pay the tax therein provided, or to proceed against the plaintiff, or any officer or agent thereof, for having engaged or continued in the business aforesaid without having first secured or obtained a license therefor as provided in said Act.

These defendants deny that said Transportation Tax Act, and every part thereof, is unconstitutional, illegal, invalid and void, and that these defendants have no lawful authority to enforce the said Act, or any provision thereof, in any manner, against the plaintiff, its agents, servants, property or business; and these defendants are advised and aver that the State of West Virginia, neither by said Chapter 5 of the Acts of the Extraordinary Session of the Legislature of West Virginia of 1919, nor by the Forms, Rules and Regulations promulgated by the said State Tax Commissioner, or otherwise, has sought or attempted to levy any tax or impose any burden upon crude oil or petroleum, or natural gas, moving from the State of West Virginia to other states, or moving from other states to the State of West Virginia, and constituting interstate commerce, but said statute simply imposes a privilege tax upon persons, firms and corporations engaged in the business of local or intrastate transportation of crude oil or petroleum and natural gas by means of pipe lines, with the proviso and exception in said statute set forth; and these defendants are advised and aver that said Transportation Tax Act, and every part thereof, is constitutional, legal and valid, and that the true interpretation and effect of said Act is to provide that no person, firm or corporation shall, after the first day

47 of July, 1919, engage or continue, within the State of West Virginia, in the business of intrastate transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, without the payment of the annual privilege tax imposed by said Act for engaging in such business; provided, however, that nothing contained in said Act shall apply to any person, firm or corporation engaged in the business aforesaid where the crude oil, petroleum, or distillates thereof, or of natural gas, is, by the entire system of such person, firm or corporation, transported a distance of less than ten miles; the amount of which said privilege

tax is measured or computed, upon a subject matter within the taxing power of the State of West Virginia, by the number of barrels of crude oil or petroleum, or the distillates thereof, or the number of thousand cubic feet of natural gas, as the case may be, as is transported or conveyed, by means of pipe lines, within the State of West Virginia,—that is, the amount of said privilege tax is measured or computed solely by the transportation business conducted within the limits of the State of West Virginia.

These defendants are without information as to when the plaintiff began the construction of its pipe line system, or to what extent the plaintiff, from time to time, has extended its said pipe lines, and constructed additional pumping stations, lines of pipe, tanks, telegraph lines, and other machinery, devices and arrangements as part of its entire system, or as to the length or sizes of its pipe lines and pipe line system; but these defendants admit that the entire system of pipe lines owned by the plaintiff and used by it in the transportation of crude oil or petroleum within the State of West Virginia greatly exceeds ten miles in length, to-wit, about forty-five hundred miles in length, and believe that nearly all, if not all, of the
48 crude oil or petroleum transported or conveyed by plaintiff by means of pipe lines within the State of West Virginia, is so transported for a distance of more than ten miles.

These defendants admit that the transportation plant of the plaintiff is located in twenty-seven counties of West Virginia, but are without information as to where its pipe lines originate or terminate; and admit that practically all of the oil which has heretofore been transported through the pipe lines of the plaintiff, and which during the year ending July 1, 1919, was transported through its pipe lines, and which is now being transported through its pipe lines, is produced in, and comes from, the states of West Virginia, Pennsylvania, Ohio, Kentucky and Illinois, and from what is known as the Mid-Continent Field, which includes the states of Kansas, Oklahoma, and part of Texas.

These defendants deny that the plaintiff was incorporated for the purposes, and its plant was constructed for the purposes, and has been used almost exclusively for the purpose, of transporting said oil, by means of its pipe lines, and the pipe lines of connecting carriers in interstate commerce, for delivery to refineries situated in the states of Pennsylvania, New Jersey, and Maryland; and these defendants aver that the plaintiff was incorporated for the purposes set forth in its said Certificate of Incorporation.

These defendants are informed and advised, and therefore aver, upon information and belief, that the Southern Pipe Line Company, the Cumberland Pipe Line Company, the Southwest Pennsylvania Pipe Lines Company, the Buckeye Pipe Line Company, and the other carriers of oil mentioned in the bill of complaint, except possibly the Pure Oil Company, whose pipe lines connect with those of the plaintiff, are affiliated corporations with the plaintiff, and
49 with each other, engaged in a single business enterprise, to-wit, the transportation and storing of crude oil or petroleum, and that plaintiff's pipe line system is only a part of an extensive sys-

tem extending through several states of the Union, other parts of which extensive system is owned by said connecting carriers of oil, respectively, and that all of said corporations, including the plaintiff, are subsidiaries of, to-wit, the Standard Oil Company of New Jersey, a corporation, and that all of the stock of said corporations, respectively, or substantially all of the stock of said corporations, respectively, is owned or controlled by the same interests, to-wit, the said Standard Oil Company of New Jersey. And these defendants call upon the plaintiff to show what interests own or control the stock of said plaintiff and said corporations whose pipe lines connect with the pipe lines system of the plaintiff. These defendants are further informed and advised, and therefore aver, upon information and belief, that the plaintiff conducts and carries on business, and performs activites, in other states of the Union, besides the State of West Virginia, and conducts and carries on other business in the State of West Virginia besides the transportation or conveying of crude oil or petroleum, by means of pipe lines, from which it receives an income, and the business of said connecting corporations is not in any way taken into consideration as the measure to compute the amount of said privilege tax imposed upon said plaintiff by said Act, and that the business and activities of the plaintiff conducted or carried on in other states, and the said other business of the plaintiff carried on in West Virginia, is not in any way taken into consideration or used as the measure to compute the amount of said privilege tax imposed upon the plaintiff under the provisions of said Act. These defendants are advised and informed, and therefore aver, upon information and belief, that the plaintiff, in the conduct of its said business, in all of its branches, enjoys and has a virtual and practical monopoly of the transportation of crude oil or petroleum, throughout the State of West Virginia.

50 These defendants are not advised in detail as to the extent, nature and character of the business of the plaintiff of transporting crude oil or petroleum, by means of pipe lines, or its methods of receiving, collecting, moving, transporting, handling or delivering such crude oil or petroleum, but assume that the methods set forth in said bill of complaint are correctly stated therein; but these defendants are advised, and upon information and belief, aver, that the crude oil or petroleum which is transported by the plaintiff, and said connecting carriers of oil, from other states, and brought to, and delivered in, the State of West Virginia, into the pipe lines and pipe line system of the plaintiff, goes into a common reservoir, to-wit, the pipe line system of the plaintiff, situate in the State of West Virginia, and thereby becomes incorporated and mixed up with, and a part of, the mass of crude oil or petroleum in the said State of West Virginia, and which is produced in said state, which is, then and there, being stored, or transported or conveyed by the plaintiff between points in the said state in local, internal or domestic commerce, and thereby loses its identity and ceases to be an article or commodity of interstate commerce.

These defendants are not advised as to the correctness of the plats marked, respectively, Exhibit, "First Map," and Exhibit, "Second

Map," filed with the bill of complaint, but assume that said plats correctly show the location of the pipe lines and pipe line system marked and projected thereon.

These defendants admit that the interstate business of the plaintiff is subject to the Constitution of the United States, and to the Act of Congress, and the several Amendments thereto, and that its interstate business of transporting oil across the several state lines is subject to the jurisdiction of the Interstate Commerce Commission, and that it is required to file with the Interstate Commerce Commission joint tariffs, showing the rates on which oil moves from various points, in connection with all connecting pipe line carriers from whom plaintiff receives, or to whom it delivers, oil, in such transportation, and
51 that plaintiff is otherwise required by law to comply with the valid rules and regulations from time to time promulgated by said Interstate Commerce Commission governing the transportation of crude oil, passing at any time through plaintiff's lines in interstate transportation; but these defendants aver that the local and intrastate business of the plaintiff is subject to the Constitution and valid laws of the State of West Virginia.

These defendants are not advised as to whether or not the plaintiff has in all respects complied with the several Acts of Congress governing the regulation of interstate transportation of oil, or has at all times complied with the rules and regulations of said Interstate Commerce Commission from time to time promulgated, and in effect governing the interstate transportation of oil and the filing of joint tariffs for the same; but assume that the plaintiff has complied with said Acts and said Rules and Regulations.

These defendants deny that the copies of tariffs filed with the bill of complaint as part thereof, bound together as one exhibit and marked for identification "Eureka Pipe Line Interstate Commerce Tariffs," are copies of all the present tariffs now on file with, and approved by, said Interstate Commerce Commission, and in full force and effect, governing rates for the transportation of oil by plaintiff of oil transported by it, in interstate commerce, over its own lines and the lines of connecting pipe line carriers, in the State of West Virginia; but these defendants are advised, and aver, that since the institution of this suit and the filing of said bill of complaint, new tariffs have been filed with, and approved by, said Interstate Commerce Commission, by the plaintiff and said connecting pipe line carriers, by which last mentioned tariffs the plaintiff and said connecting pipe line carriers have been allowed large increases in rates, tolls and charges for transporting and delivering oil, and by which tariffs the plaintiff has been allowed an increase of, to-wit, ten cents per barrel of forty-two U. S. gallons for gathering and transporting oil from wells to delivery points within the State of West Virginia, the rates,
52 tolls and charges for such service having been increased from twenty cents per barrel of forty-two U. S. gallons to thirty cents per barrel of forty-two U. S. gallons, and which said increases in rates, tolls and charges became effective on, to-wit, the 20th day of September, 1919. And these defendants aver that by an order of the Public Service Commission of the State of West Vir-

ginia, duly made and entered on the 16th day of September, A. D. 1919, the plaintiff was authorized and permitted to increase its rates, tolls and charges for gathering, transporting and delivering petroleum or crude oil in West Virginia from twenty cents per barrel for each barrel of forty-two U. S. gallons, to the sum of thirty cents per barrel for each barrel of forty-two U. S. gallons, which said last mentioned increase in rates, tolls and charges became effective on, towit, the 20th day of September, 1919.

These defendants further aver that all of said increased rates, tolls and charges are now in force and effect, and have been in force and effect, to-wit, since the 20th day of September, 1919, and that the plaintiff, since, to-wit, the said 20th day of September, 1919, has been charging and collecting the said increased rates, tolls and charges set forth in said new tariffs, and said order of said Commission, as aforesaid, for gathering, transporting and delivering oil.

These defendants are not advised in detail as to the actual quantity of oil transported and delivered by the plaintiff during the year beginning July 1, 1918, and ended June 30, 1919, or where it was produced, or the quantity thereof produced outside of the State of West Virginia, or within the State of West Virginia, or the quantity thereof produced, transported or delivered by the plaintiff to points within the State of West Virginia, or to points without the State of West Virginia, during said year; but assume that the same are correctly stated in the bill of complaint; and these defendants
53 admit that any return filed by the plaintiff with said State Tax Commissioner under said Transportation Tax Act will show that the quantity of oil transported or conveyed by the plaintiff within the State of West Virginia during the year ended June 30, 1919, is 22,531,315.06 barrels.

These defendants again deny the correctness of the interpretation and construction sought to be placed upon said Transportation Tax Act by the plaintiff as averred in its bill of complaint, particularly the correctness of the interpretation and construction sought to be placed upon said Act by the plaintiff in its bill of complaint on pages 26, 27 and 28 thereof; but these defendants admit that if the plaintiff makes the return mentioned in the bill of complaint the said State Tax Commissioner will thereupon ascertain and assess upon and against the plaintiff a tax of two (2) cents for each barrel of forty-two gallons of crude oil or petroleum transported or conveyed by the plaintiff within the State of West Virginia, during the year beginning July 1, 1918, as an annual tax for plaintiff engaging in said transportation business in said state for one year.

These defendants are not advised as to whether the plaintiff is a producer or purchaser of oil or not, and is not advised whether it owns the oil in its custody or transported by it or not, or whether it has an interest in said oil so transported or not; but these defendants are advised and informed, and therefore aver, upon information and belief, that nearly all, if not all, of the crude oil or petroleum so transported, or stored, by the plaintiff within the State of West Virginia is purchased and owned by, and is transported for, some corporation which is affiliated with the plaintiff, and is a subsidiary of the said Standard Oil Company of New Jersey.

54 These defendants are advised, and therefore admit, the payment of taxes by the plaintiff to the State of West Virginia, set forth in the said bill of complaint; but deny the correctness of the construction of the plaintiff as to its rights and privileges by reason of the payment of said taxes, and each of them, as is averred in said bill of complaint. These defendants aver that similar taxes have been, and are being, paid by all corporations created under the laws of the State of West Virginia, and possessing powers and duties similar to those of the plaintiff, and are advised, and therefore aver, that the payment of such enumerated taxes upon the physical property of the plaintiff, the annual license tax, the annual excise taxes, and the tax designated as its proportion of the expenses of maintaining the Public Service Commission of the State of West Virginia, do not constitute any ground or reason for rendering invalid the Special Privilege Tax provided for by said Transportation Tax Act; and these defendants deny that the taxes assessed upon and paid by the plaintiff, set forth in said bill of complaint, and the tax imposed by the said Transportation Tax Act, constitute a doubling and trebling of taxes paid by said plaintiff to the said State of West Virginia, for each calendar year, upon and against its property, and the value thereof, its business and the income therefrom, its franchises and privileges.

These defendants are not advised as to the actual or total cost of plaintiff's pipe line system, and of its property in West Virginia or elsewhere, as of December 31, 1918, and on June 30, 1919, or as of the present time; nor are these defendants advised as to what the plaintiff has invested in its transportation system, or what is its actual investment in its said plant, at the present time, after deducting accrued depreciations, but assume that the figures in regard thereto set forth in said bill of complaint are correct.

55 These defendants are advised and informed, and aver, upon information and belief, that the cost of said plant and system as it stands on the books of the plaintiff as of the 31st day of December, 1918, is $9,084,184.99, without any allowance for depreciation, and that it would cost to reproduce said plant and system, under existing prices and conditions, practically double said last mentioned sum, to wit, $18,000,000.00.

These defendants are not advised whether, and do not therefore admit, that the State of West Virginia and its Board of Public Works, in placing the valuations set forth in plaintiff's bill of complaint, upon plaintiff's said property, under the general property tax law of said state, has considered the gross income and the net income of plaintiff, from its transportation business for each year from the year 1906 to the year 1918, both years inclusive, and said state has placed said large valuations, from year to year, upon plaintiff's said property because of plaintiff's gross income therefrom and its net income therefrom for the years mentioned, and said valuations, respectively, were determined and fixed by said state largely upon said gross income and said net income for said years, and these defendants call for strict proof thereof.

These defendants deny the averment appearing on page 36 of

plaintiff's bill of complaint that said privilege tax "is, as to plaintiff, in fact, a tax upon freight in transit, after having been delivered to a common carrier, for transportation, mostly in interstate commerce, and constitutes and is a tax upon the freight, that is, crude oil, transported during last year, namely, for the year ending July 1, 1919, and did not become effective until after all of said oil, transported during said year, had been delivered, and the charges therefor, at published rates, paid by the shippers thereof, and plaintiff's lien thereon lost, and plaintiff has no way of including said
56 tax as an item of expense for said year, to be paid out of the charges for transporting said oil; and the payment of said tax, so measured, is required by said Act, to entitle plaintiff to engage in or continue in said business during the coming year."

These defendants deny the averment appearing on page 37 of plaintiff's bill of complaint that "the course of plaintiff's business is to transport oil, by pipe lines, from other states and from wells and tanks in West Virginia, by means of connecting carriers, in the constant, continuous and uninterrupted flow thereof, at the directions of shippers, across said several state lines, to points of destination in other states, and the current of oil thus existing is a current of commerce among the states, and said Act provides that such commerce shall be taxed at the rate therein prescribed, and the said Tax Commissioner has so interpreted and intends so to enforce said Act against plaintiff."

These defendants are not advised as to the total net income of plaintiff from all sources, for the year ended June 30, 1919, or for the first six months of the calendar year 1919, but assume that the sums set forth in plaintiff's bill of complaint are correct; but these defendants deny that for the year ending December 31, 1919, plaintiff's total net income from all sources will be considerably less than $450,000.00.

These defendants deny that the proposed tax of two (2) cents per barrel upon each barrel of crude oil transported by plaintiff during the year ending July 1, 1919, will greatly exceed plaintiff's total net income for the calendar year 1919.

These defendants are not advised as to the gross receipts of the plaintiff from about 7,820,964.62 barrels of oil transported
57 by it, but deny that said proposed transportation tax, if enforced against the plaintiff, will take from it practically its gross receipts for transporting such part of said oil, and, as to a considerable portion of said oil, much more than its gross receipts for transporting such portion thereof.

These defendants are not advised as to the averments appearing on page 38 of plaintiff's bill of complaint, in the following words: "Plaintiff avers that it is not engaged in the business of transporting natural gas or the products or distillates of crude oil or petroleum, or natural gas, or both; but the plaintiff transports by pipe lines, ranging in length from a few feet to about five and one half miles in length, gas purchased by it and used by it for heat, light and fuel in and about its pumping stations which number about sixty eight. These are service lines and are wholly disconnected

from each other and are not an entire system. By one other gas line, less than twelve miles in length, plaintiff transports gas, produced in the State of Pennsylvania, purchased by it at the well, and delivered to it by pipe line, at the West Virginia-Pennsylvania State line, and then conveyed through said line, in continuous flow from the well to its Morgantown Station and used by it for heat, light and fuel, the total amount thereof, for the year ending June 30, 1919, being 126,982,000 cubic feet. That said current of gas, in said line, is commerce among the States, and its transportation by plaintiff is interstate commerce. That said Tax Act is void and ineffective as to plaintiff's gas lines and gas transportation, upon the same grounds herein set forth as to its oil business," and therefore deny the same, and call for strict proof thereof.

These defendants, upon information and belief, deny that said "transportation tax act, and every part of said act, is unconstitutional, illegal and void, and directly, and by its necessary
58 operation and effect, violates the rights of plaintiff under the Constitution of the United States of America in the respects averred in detail in Paragraphs (*a*), (*b*), (*c*), and (*d*) appearing on pages 39 and 40 of plaintiff's bill of complaint."

These defendants, upon information and belief, deny that "said act directly, and by its necessary operation and effect, violates the rights of plaintiff under the Constitution of the State of West Virginia in the respects averred in detail in Paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), and (*f*) appearing on pages 40, 41 and 42 of plaintiff's said bill of complaint."

These defendants, upon information and belief, deny that said Act, and every part thereof, or any part thereof, is in many other respects in violation of the Constitution of the United States and of the State of West Virginia, and, upon information and belief, deny each and every averment of plaintiff's said bill of complaint appearing on pages 43, 44 and 45 of plaintiff's bill of complaint.

These defendants, upon information and belief, further deny that said Transportation Tax Act, (Chapter 5, Acts 1919, Extraordinary Session, is unconstitutional, null and void, or invalid for any ground or reason set forth by said plaintiff in its said bill of complaint, or for any other reason as conflicting with any provision of the Constitution of the United States, or the Constitution of the State of West Virginia, and aver that said statute was, and is, in all respects, constitutional and valid, and a law properly enacted by the State of West Virginia.

These defendants therefore pray that the prayer of the plaintiff's bill be denied, and that upon final hearing said bill be dis-
59 missed at the plaintiff's costs, and having fully answered these defendants, as in duty bound, will ever pray, etc.

(Signed) E. T. ENGLAND,
Attorney General of the State of Virginia;
WALTER S. HALLANAN,
State Tax Commissioner of the State of Virginia,

By COUNSEL.

JOHN T. SIMMS,
FRED O. BLUE,
W. G. MATHEWS,
S. B. AVIS,
FRANK LIVELY,
Asst. Atty. General of West Va., Solicitors.

60 STATE OF WEST VIRGINIA,
County of Kanawha, To-wit:

Walter S. Hallanan, being duly sworn, on his oath, says that he is the duly appointed and acting State Tax Commissioner for the State of West Virginia, and, as such, one of the defendants named in the foregoing answer; that he has read said answer and is familiar with the contents thereof; and that the matters and allegations therein contained are true, except so far as they are therein stated to be upon information and belief, and that so far as they are therein stated to be upon information and belief, he believes them to be true.

WALTER S. HALLANAN.

Taken, subscribed and sworn to before me this 29 day of October, 1919.

My commission expires on the 19 day of April, 1919.

CHARLES A. WOOD,
Notary Public.

61 STATE OF WEST VIRGINIA:

Certificate of Incorporation.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, do hereby certify that an Agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Eureka Pipe Line Company, "for the purpose of transporting, piping, shipping and storing petroleum and other mineral oils; of

purchasing, leasing and otherwise acquiring, developing, holding, selling and disposing of real estate and other property, which may be necessary or convenient for the purpose of its organization and business, and of erecting, constructing, acquiring, operating and maintaining a line or lines of pipe, tubing, tanks, offices, stations and such other machinery and devices or arrangements, including telegraph lines, as may be necessary for the purpose of transporting, piping, shipping and storing petroleum or other mineral oils; and the transaction of its business, with the right to have and enjoy all the rights, powers, privileges and franchises granted and conferred upon corporations organized for said purpose by the laws of West Virginia."

Which corporation shall keep its principal office or place of business at Oil City, County of Venango, in the State of Pennsylvania, and is to expire on the 10th day of December, A. D. 1940. And for the purpose of forming said corporation, we have subscribed the sum of one million ($1,000,000) dollars to the capital stock thereof, and have paid in on said subscriptions the sum of one hundred thousand ($100,000) dollars, being ten per centum of the amount thereof, and desire the privilege of increasing the said capital, by the sale of additional shares from time to time to the sum of two million ($2,000,000) dollars in all.

62 The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively, as follows, that is to say:

Daniel O'Day, of Buffalo, N. Y., nine thousand two hundred shares.
C. N. Payne, of Titusville, Pa., two hundred shares.
C. W. Archibald, of Parkersburg, W. Va., two hundred shares.
H. McSweeney, of Oil City, Pa., two hundred shares.
J. R. Campbell, of Oil City, Pa., two hundred shares.

And the capital to be hereafter sold is to be divided into shares of a like amount.

Given under our hands this — day of December, A. D. 1890.

DANIEL O'DAY.
C. N. PAYNE.
C. W. ARCHIBALD.
H. McSWEENEY.
J. R. CAMPBELL.

Wherefore, the corporators named in the said Agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the tenth day of December, Nineteen Hundred and Forty a Corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-second day of December, eighteen hundred and ninety.

[SEAL.]

WM. A. OHLEY,
Secretary of State.

STATE OF WEST VIRGINIA:

Office of Secretary of State.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, do hereby certify that Daniel O'Day, President of The Eureka Pipe Line Company, a corporation created under the laws of this State, has certified to me under his signature and the corporate seal of said corporation, that, at a meeting of the stockholders thereof, held in pursuance of law at Oil City, Pa., on the 18th day of March,
63 1892, at which meeting all the stock of the company was represented by the holders thereof in person or by proxy, the following resolution was unanimously adopted:

"Resolved, that the capital stock of The Eureka Pipe Line Company be, and the same is hereby increased to Five Million ($5,000,000) of dollars, to be divided into fifty thousand (50,000) shares of the par value of one hundred ($100) dollars each."

Wherefore, I do declare said increase of capital stock as set forth in the foregoing resolution to be authorized by law.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this sixth day of April, 1892.

[G. S.] WM. A. OHLEY,
Secretary of State.

(*Certificate under Section 906, Revised Statutes of the United States.*)

UNITED STATES OF AMERICA,
State of West Virginia:

Office of Secretary of State.

I, Houston G. Young, Secretary of State of the State of West Virginia, being the officer who, under the constitution and laws of said State, is authorized to issue certificates of incorporation of all companies incorporated under the laws thereof, and being the officer authorized to issue certificates certifying changes in and amendments to such certificates of incorporation, and being the officer who is the keeper of all the records and papers relating to the creation of such incorporated companies and of changes in and amendments to said certificates of incorporation, including the powers of attorney of such incorporated companies, appointing a resident agent or attorney in said State, and of the reports of such incorporated companies, and being the officer authorized to authenticate exemplifications of the same, do hereby certify that the foregoing and annexed instrument is an exemplified copy, carefully compared by me with the original record now in my official custody as said Secretary of State, and found to be a true and correct copy of the Certificate of Incorporation of The Eureka Pipe Line Company, dated the
64 22nd day of December, 1890, and of the certificate of increase, dated the 6th day of April, 1892, and recorded in the

records of Corporations of my said office; and that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof I have hereunto attached my official signature and the Great Seal of the State of West Virginia, at the Capitol in the City of Charleston, this 22nd day of October, 1919.

[G. S.] HOUSTON G. YOUNG,
Secretary of State.

The foregoing writing bears the following endorsements upon the back thereof:

"In the Circuit Court of Kanawha County, West Virginia. The State of West Virginia. Montana-Semper-Liberi. Certified Copy of Certificate of Incorporation of The Eureka Pipe Line Company. Filed by order of Court Oct. 30, 1919, in Kanawha Circuit Court Clerk's Office. A. P. Hudson, Clerk. Original dated December 22, 1890. Defendants' Exhibit No. 1.

65 In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Defendants.

This day came The Eureka Pipe Line Company, a corporation, the plaintiff in the above styled suit, by Charles Powell and Kemble White, of its counsel, and tendered and moved the court for leave to file a notice in writing, duly served upon defendants Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, as appears from the return of service endorsed upon said notice, to the effect that said plaintiff would, at this time and place, move the Circuit Court of Kanawha County for a temporary injunction and restraining order against the said defendants as in the said notice particularly set forth.

At the same time the said plaintiff tendered and moved the court for leave to file its bill of complaint herein, duly executed under its corporate seal by E. R. Shepard, its Vice President and duly verified by the affidavit of E. R. Shepard, together with the exhibits in said bill of complaint mentioned.

Thereupon, pursuant to said notice, the said plaintiff moved the court for a temporary injunction and restraining order against the defendant Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and all persons acting under his authority

or direction, inhibiting, enjoining and restraining them from enforcing, or attempting to enforce, in any manner, that certain Act of the Legislature of West Virginia, Extraordinary Session 1919, Chapter 5 (House Bill No. 3), or any part thereof, against plaintiff, and from requiring it to make any return or report to said State Tax Commissioner of the amount of oil or gas transported by it, and from assessing upon or against it any tax thereunder and from collecting, or proceeding to collect, from it, in any manner, any tax thereunder, or any penalty or fine therein prescribed, and for a temporary injunction and restraining order against E. T. England, Attor-
66 ney General of the State of West Virginia, and all persons acting under his authority, advice or direction, inhibiting, enjoining and restraining them, from enforcing, or attempting to enforce, any and every part of said Act against plaintiff, and from proceeding to have plaintiff, its property, agents or employees held liable for any tax, penalty or any fine therein prescribed, as prayed for in said bill of complaint, all until the further order of the court, or the Judge thereof in vacation.

At the same time the plaintiff moved the court for leave to sue out process herein against the defendants and to mature this cause for hearing against them.

Upon consideration whereof, it is adjudged, ordered and decreed that said notice of motion for injunction and said bill of complaint and exhibits therewith be, and the same are hereby filed and leave is granted the plaintiff herein to sue out process herein against the said defendants and mature this cause for hearing upon the said bill of complaint and exhibits therewith.

And the further hearing of the matters arising upon said motion for injunction is set down for September 15th, 1919.

(The foregoing order bears the following endorsement upon the back thereof: "Order Filing Bill &c. & Recording Motion for Injunction. H. D. Rummel, Judge. Entered in Chanc. Order Book No. 42 page 26 Aug. 26, 1919.")

67 In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner, et al.

This day came the plaintiff, by its counsel, and also came the defendant Walter S. Hallanan, State Tax Commissioner, by S. B. Avis, W. Gordon Mathews and Fred O. Blue, his counsel, and also came the defendant E. T. England, Attorney General of the State of West Virginia; and the said defendants expressing a desire that the further hearing of plaintiff's motion for a temporary injunction be continued to a l-ter day, in order to give said defendants addi-

tional time herein; on motion of said defendants, it is adjudged, ordered and decreed that the further hearing of the plaintiff's motion for a remporary injunction be, and the said is, set for Wednesday, the 16th day of October, 1919.

(The foregoing order bears the following endorsement upon the back thereof:

"Order Continuing. Enter: H. D. Rummel, Judge. Entered in Chanc. Order Book No. 42 page 75 September 15, 1919.")

68 In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner, et al.

This day came the plaintiff, by its counsel, and also came the defendant, Walter S. Hallanan, State Tax Commissioner, by S. B. Avis, W. Gordon Mathews and Fred O. Blue, his counsel, and also came the defendant E. T. England, Attorney General of the State of West Virginia; and the said defendants expressing a desire that the further hearing of plaintiff's motion for a temporary injunction be continued to a later day, in order to give said defendants additional time herein; on motion of said defendants, it is adjudged, ordered and decreed that the further hearing of the plaintiff's motion for a temporary injunction, be, and the same is, set for Thursday, the 30th day of October, 1919.

(The foregoing order bears the following endorsement upon the back thereof:

"Order Continuing. Enter: H. D. Rummel, Judge. Entered in Chy. Order Book No. 42 page 149 Oct. 22, 1919.")

69 In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., and E. T. ENGLAND, Attorney General, etc.

This day came the parties, by their respective attorneys, and thereupon the defendants tendered their joint and separate demurrer and answer, and their exhibit therewith, to the bill of complaint herein, which answer was duly verified.

Upon consideration thereof, leave is granted to said defendants to file in open court their said demurrer and answer, and the same is accordingly filed.

Thereupon the plaintiff moved the court to continue the further hearing of this matter until the 24th day of November, 1919, which motion is granted, and this cause is set down for a further hearing of all matters in issue hereon on said 24th day of November, 1919.

(The foregoing order bears the following endorsement upon the back thereof:

"Order. Enter, H. D. Rummel, Judge. Entered in Chy. Book No. 42, page 160, Oco. 30, 1919.")

70 In Chancery.

No. 5434.

EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., and E. T. ENGLAND, Attorney General of the State of West Virginia.

This day came the parties hereto by their respective counsel, and it appearing to the court that the plaintiff has begun the taking of its testimony herein, and desires additional time within which to complete the same, therefore, on motion of the plaintiff, and the defendants, by counsel, consenting thereto, the further hearing of the matters involved herein is continued to the eighteenth day of December, 1919.

(The foregoing order bears the following endorsement upon the back thereof:

"Order. Enter as of Nov. 24th. H. D. Rummel, Judge. Entered in Chy. Order Book No. 42 page 225 Nov. 26, 1919.")

71 In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., and E. T. ENGLAND, Attorney General of the State of West Virginia.

This day came the parties hereto, by their respective counsel, and it appearing to the Court that the plaintiff has begun the taking of its testimony herein, and desires additional time within which

to complete the same; therefore, on motion of the plaintiff, and the defendants, by counsel, consenting thereto, the further hearing of the matters involved herein is continued to the 26th day of January, 1920.

(The foregoing order bears the following endorsement upon the back thereof:

"Order. H. D. Rummel, Judge. Entered in Chy. Order Book No. 42 page 295 Dec. 22, 1919.")

72 In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al.

This day came the parties, by their respective counsel, and tendered and asked to file a stipulation in writing of certain facts (in lieu of otherwise proving the said facts), the same being endorsed "Stipulation of certain Facts." And it is adjudged, ordered and decreed that said stipulation be, and hereby is, filed and made part of the record of this cause.

(The foregoing order bears the following endorsement upon the back thereof:

"Order. Enter Jan. 27th, 1920. H. D. Rummel, Judge. Entered in Chy. Book No. 42 page 368, Jan. 27, 1920.")

73 In Chancery.

No. 5434.

EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al.

This day came the parties, by their respective counsel, and the plaintiff now tenders for filing its exceptions in writing to certain parts of and averments contained in the answer of the defendants, and which is also its motion to strike out and expunge said parts and averments of said answer so excepted to; and on plaintiff's motion the said exceptions and motion in writing is now filed and made part of the record of this cause. And the Court takes time to consider of such exceptions and motion.

(The foregoing order bears the following endorsement upon the back thereof:

"Order. Enter Jan. 27th, 1920. H. D. Rummel, Judge. Entered in Chy. Order Book no. 42 page 368 Jan. 27, 1920.")

74 In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General.

This day came the parties, plaintiff and defendants, by their respective counsel, and for reasons appearing to the Court the hearing in this case is postponed and continued until tomorrow, January 27, 1920, at 2 o'clock in the afternoon.

This order should have been entered on January 26th, 1920, but being inadvertently omitted is entered now for then.

(The foregoing order bears the following endorsement upon the back thereof:

"Order Continuing. Enter: H. D. Rummel, Judge. January 26, 1920. Entered in Chy. Order Book No. 42, page 366. January 27, 1920.")

75 In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al.

This day comes the plaintiff, by Frank L. Crawford, Charles Powell and Kemble White, its counsel, and the defendants, by W. G. Mathews and Fred O. Blue, of their counsel, and thereupon said plaintiff now moves the Court for leave to amend its bill of complaint by striking out of the same the following words, that is to say: "and incidentally storing," where these words appear on the second page of said bill at lines 9 and 10 thereof; "and incidentally storing," where these words appear on the eight page of said bill at line 16 thereof; "and incidental storage," where these words appear on the ninth page of said bill at line 29 thereof; and presents a notice of said motion given by it to the defendants, and service of which notice the defendants, by their counsel, accepted on January

19, 1920, which notice (with acceptance of service) is now ordered to be and is now filed and made part of the record of this cause; and in connection with said motion for leave to so amend, and plaintiff's desire to so amend, defendants, by their counsel, now say that they do not object to the manner in which said amendment of said bill is so sought to be made, instead of by formal tender of an amended bill, and they waive any objection which they might have or make to the granting of such leave because of the said manner in which the same is asked and because an amended bill embracing the same is not presented; but said defendants do now (regardless of the manner of procedure thereon on plaintiff's part) object to the granting of leave to the plaintiff to amend its bill of complaint by striking out the aforesaid words appearing therein at the places above indicated, or any of said words, as asked by plaintiff. And the said motion of plaintiff for leave to so amend, and defendants' objections to and resistance of said motion, being now fully presented and argued by counsel and submitted to the Court, the Court does take time to consider the same and of its action thereon.

And the right of plaintiff to reply generally to the answer already filed of the defendants, is reserved to it until said motion aforesaid is determined, if it shall desire such period therefore, and then file such replication.

76 This order has been entered on January 26th 1920, but being inadvertently omitted is entered now for then.

(The foregoing order bears the following endorsement upon the back thereof:

"Order. Enter Jan. 26th, 1920. H. D. Rummel, Judge. Entered in Chy. Order Book No. 42 page 367 Jab. 27, 1920.")

77 In Chancery.

No. 5434.

EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLAN, State Tax Commissioner, and E. T. England, Attorney General.

Pursuant to the order setting this case for final hearing and submission on January 27, 1920, the parties hereto then appeared by their respective counsel, and this case having come on to be heard and now having been fully heard, upon the plaintiff's bill of complaint and the exhibits therewith, the joint and separate demurrer and answer of the defendants, and the exhibits with said answer, said demurrer duly set down for hearing and argument, the depositions of witnesses duly taken and filed with the clerk of this court on behalf of the plaintiff, and the exhibits filed therewith, the depositions of witnesses duly taken and filed on behalf of the defendants and the exhibits therewith, the stipulations of counsel set forth and ap-

pearing in said depositions, respectively, the additional stipulation of facts signed by counsel for the plaintiff and the defendants and filed in open court January 27, 1920, the exceptions in writing of the plaintiff to certain paragraphs in the answer of said defendants, the motion in writing of said plaintiff for leave to amend the bill of complaint herein by striking therefrom the words "and incidental storing" and "and incidental storage," together with the objections and resistance of the defendants to said motion for leave so to amend said bill, upon the plaintiff's motion for an injunction as prayed for in its bill of complaint, and upon general replication by the plaintiff to the answer of said defendants, and full argument of counsel as well as for the plaintiff as the defendants, this case is now submitted to the Court for final consideration, decision and decree and the Court takes time to consider of its judgment.

(The foregoing order bears the following endorsement upon the back thereof:

"Order Submitting. Enter. H. D. Rummel, Judge. Entered in Chy. Order Book No. 42 page 375 Jan. 31, 1920.")

78 In the Circuit Court of Kanawha County, West Virginia.

In Chancery.

THE EUREKA PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

WALTER S. HALLANAN et al., Defendants.

To the Honorable Henry D. Rummel, Judge of said Court:

The exceptions taken by The Eureka Pipe Line Company, a corporation, plaintiff, to the joint and separate answer of the defendants to the bill of complaint in this cause, for impertinence:

First Exception.—For that said answer, beginning with the words "that the Southern," in the twenty fourth line on page 8 thereof, to and including the words "in a single business enterprise," in the first line of page 9 thereof, is impertinent and ought to be expunged.

Second Exception.—For that said answer, beginning with the words "and that all of said corporations," in the fifth line on page 9 thereof, to and including the words "New Jersey," in the tenth line on page 9 thereof, is impertinent and ought to be expunged.

Third Exception.—For that said answer, beginning with the words "and these defendants call," in the tenth line on page 9 thereof, and ending with the word "plaintiff," in the thirteenth line on page 9 thereof, is impertinent and ought to be expunged.

Fourth Exception.—For that said answer, beginning with the words "these defendants," *om* the twenty sixth line on page 9 thereof,

and ending with the words "West Virginia, in the thirtieth line on page 9 thereof, is impertinent and ought to be expunged.

Fifth Exception.—For that said answer, beginning with the words, "but these defendants," in the twenty fourth line on page 13 thereof, and ending with the words "New Jersey," in the thirtieth line on page 13 thereof, is impertinent and ought to be expunged.

79 In all which particulars the plaintiff humbly insists that said answer is impertinent: Wherefore, said plaintiff excepts thereto and prays that the impertinence of the said answer, excepted to as aforesaid, may be expunged.

THE EUREKA PIPE LINE COMPANY,
By A. B. FLEMING,
CHARLES POWELL,
KEMBLE WHITE,
Its Counsel.

(The foregoing paper bears the following endorsement upon the back thereof:

"Exceptions of Plaintiff to parts of Defendants' Answer. Filed by order of Court Jan. 27, 1920, in Kanawha Circuit Court Clerk's Office. A. P. Hudson, Clerk.")

80 In the Circuit Court of Kanawha County, West Virginia.

In Chancery.

THE EUREKA PIPE LINE COMPANY, a Corporation, Plaintiff,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, et als., Defendants.

Depositions of John J. Kenney and others, taken before Robert A. Huddleston, Notary Public, Kings County, New York (certificate filed in New York County, No. 472), taken pursuant to the annexed notice, beginning on the 17th day of November, 1919, between the hours of 10:30 o'clock a. m. and 4:30 o'clock p. m., at the offices of Peck, Crawford & Harris, No. 32 Liberty street, New York city, to be read in evidence on behalf of the plaintiff in the suit in chancery pending in the Circuit Court of Kanawha County, West Virginia, in which The Eureka Pipe Line Company, a corporation, is plaintiff, and Walter S. Hallanan, as tax commissioner of West Virginia, and E. T. England, Attorney General, West Virginia, are defendants.

81 *Appearances.*

For the plaintiff:

Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.

For the defendants:

S. B. Avis.

At this point Robert A. Huddleston, Notary Public, administered the oath required by law to Charles W. Elmer, as stenographer.

It is stipulated by and between the parties that the signatures of the witnesses to their respective depositions may be waived.

82 Mr. Crawford: We offer in evidence the certified copy of the certificate of incorporation of The Eureka Pipe Line Company, the plaintiff in this case, and request that the same be marked Plaintiff's Exhibit 1.

Paper received in evidence and marked Plaintiff's Exhibit 1 of this date.

Mr. Crawford: We offer in evidence certified copy of the certificate of the increase in capital stock of The Eureka Pipe Line Company, the plaintiff in this suit, and request that the same be marked Plaintiff's Exhibit 2.

Paper received in evidence and marked Plaintiff's Exhibit 2 of this date.

Mr. Crawford: We ask the Court to take judicial notice of the following statutes which we request the Notary for convenience to the court and counsel to have copied in full upon the record:

The laws of West Virginia, Acts 1879, Chapter 27.

Laws of West Virginia, Acts of 1891, Chapter 44, and same as reenacted in the Code of West Virginia, and set forth in the edition of that Code for the year 1913 as serial sections 3549 to 3570 inclusive, forming Chapter 620 of that code.

Acts of 1891, West Virginia, Chapter 113, Section 24, which appears as serial section 2833 of the Code of West Virginia in the edition of 1913.

Serial Section 1719 of the Code of West Virginia, as
83 amended, particularly as amended in regular session of 1907, Acts of that year, Chap. 74, and which was Section 20 of the Chapter last named.

Act of Congress February 4, 1887, Chapter 104 thereof, commonly known as the Interstate Commerce Act, as amended, and particularly as amended by the Act of June 29, 1906, Chapter 3591. The said Act also appearing in United States Compiled Statutes, Edition of 1916, Volume 8 at page 8563, and Section 1 thereof referred to, being nominated in said Compiled Statutes by the serial number 8563.

The Court is especially requested to take judicial notice of Section 1 of the Act as amended.

The following are the Acts and parts of Acts to which the Court's attention has been directed:

Laws of West Virginia.

Acts 1879, Ch. 27.

Transportation of Petroleum or Other Oils or Liquids.

1. All companies heretofore or hereafter organized for the purpose of transporting petroleum or other oils or liquids through pipes of iron or other material, shall be required to accept all petroleum offered in a merchantable order to them in quantities of not less than two thousand gallons at the wells where the same is produced, and transport the same to any tank or other receptacle on the route of their line of pipes, which may be designated by the owners of the petroleum as offered.

2. All petroleum offered for transportation shall, before the same is transported as provided in section one of this act, be in-
84 spected, graded and measured, and the company accepting the same for transportation, shall give to the owner thereof a receipt, stating therein the number of barrels or gallons so received and the grade, gravity and measurement thereof, and within a reasonable time thereafter, upon the demand of said owner or his assignee, shall deliver to him at the point of delivery, a like quantity and grade or gravity of petroleum, in a merchantable condition as specified in such receipt, except that the company may deduct for waste, one per centum of the amount of petroleum specified in such receipt.

3. The charge for receiving, transporting and delivering petroleum shall not exceed two cents per barrel, of forty gallons, per mile; provided, that if said rate should amount for the whole distance transported, to less than ten cents per barrel, then the sum of ten cents per barrel may be charged; provided, that not more than thirty cents shall be charged for any distance less than twenty miles and for all distances over twenty miles, one and one-half cents per mile may be charged. The charge for transporting water shall not exceed five cents per barrel, of forty gallons each; and if any company mentioned in this act shall charge a higher rate or amount for receiving, transporting and delivering petroleum or other oils or liquids, than is prescribed by this act, they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than five hundred dollars
85 for each offence, and shall moreover be liable to the party aggrieved for double damages and costs.

4. It shall be unlawful for any railroad company, or transportation company, through pipes or otherwise, to charge, demand or receive from any person or firm, a greater or less rate for the transportation of any article, than it charges, receives or demands from any other person or firm, for the transportation of like or similar articles, and for each violation of the provisions of this section, such

company shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars and not more than one thousand dollars. Any shift, device or subterfuge made or attempted for the purpose of evading the provisions of this section shall be void.

5. Any transportation company mentioned in the first section of this act, shall be permited to charge for storage of petroleum two cents per barrel per month, or part of a month, unless removed within five days from date of storage, and shall be allowed for evaporation and waste, one-half of one per centum of the oil per month unless removed within fifteen days from date of storage; and for every charge in excess of the amount herein authorized, the company shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than one thousand dollars, and shall moreover be liable to the party aggrieved for all damages sustained by him by reason of such excessive charge.

86 6. Any company transporting petroleum or other oils or liquids shall have a lien on the same until all charges are paid for freight, storage, etc.

Chapter 62C.

Transportation of Petroleum or Other Oils or Liquids.

Sec. 3549. Persons and companies subject to provisions of act.

1. Every person, corporation or company now engaged or who shall hereafter engage or continue in the business of transporting or storing petroleum, by means of pipe line or lines or storage by tanks, shall be subject to the provisions of this act and shall conduct such business in conformity herewith; and the word company whenever used in this act shall be construed to include persons and corporations.

Acts 1879, Ch. 27; 1891, Ch. 44.

Sec. 3550. Duty to receive for transportation—Connections with tanks or receptacles—Delivery.

2. Any company heretofore or hereafter organized for the purpose of transporting petroleum or other oils or liquids, by means of pipe line or lines, shall be required to accept all petroleum offered to it in merchantable order in quantities of not less than two thousand gallons at the wells where the same is produced, making at its own expense all necessary connections with the tanks or receptacles containing such petroleum, and to transport and deliver the
87 same at any delivery station, within or without the State, on the route of its line of pipes which may be designated by the owners of the petroleum so offered.

Acts 1879, Ch. 27; 1891, Ch. 44.

Sec. 3551. Inspection—Grading and measurement before transportation—Receipts—Deductions for waste.

3. All petroleum of a gravity of thirty-five degrees, Baume or under, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipe line or lines, shall, before the same is transported, as provided by section two of this act, be inspected, graded and measured at the expense of the pipe line company, and the company accepting the same for transportation shall give to the owner thereof a receipt stating therein the number of barrels or gallons so received, and the grade, gravity and measurements thereof, and within a reasonable time thereafter, upon demand of said owner or his assigns, shall deliver to him at the point of delivery a like quantity and grade or gravity of petroleum in merchantable condition as specified in said receipt; except that the company may deduct for waste, one per centum of the amount of petroleum specified in such receipt.

Acts 1879, Ch. 27; 1891, Ch. 44.

Sec. 3552. Charge for transportation.

4. The charge for receiving, transporting and delivering petroleum of the gravity of thirty-five degrees Baume or under, at
88 a temperature of sixty degrees Fahrenheit, by means of pipe line or lines shall not exceed one cent per barrel of forty-two gallons per mile; provided, that if said rate should amount for the whole distance transported to less than ten cents per barrel, then the sum of ten cents per barrel may be charged; and, provided that if the distance be over twenty miles and not more than thirty miles, one half cent per barrel may be charged for every mile over twenty miles; and provided, further, that if the distance be over thirty miles, the maximum charge shall not exceed twenty-five cents.

Acts 1879, Ch. 27; 1891, Ch. 44.

Sec. 3553. Charge for storage.

5. Any company engaged in storing petroleum of a gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, by means of tanks, shall be permitted to charge for storage one cent per barrel per month or part of a month, unless the same is removed within fifteen days from the date when said oil is received into the custody of such company, and shall be allowed for evaporation and waste one-half of one per centum of the oil per month unless removed within thirty days from the date of the receipt of such petroleum; but no company engaged in the business of storing petroleum of the gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, shall charge for storage any amount in excess of that authorized by this section.

Acts 1879, Ch. 27; 1891, Ch. 44.

89 Sec. 3554. Inspection and measurement before transportation—Receipts—Contents—Deductions for waste—Delivery—Liability for loss.

6. All petroleum of a gravity exceeding thirty-five degrees Baume at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipe line or lines, shall be inspected and measured at the expense of the company transporting the same, before the same is transported; and the company accepting the same for transportation, shall give to the owner thereof, or to the person in charge of the well or wells from which such petroleum has been produced and run, a ticket signed by its gauger, stating the number of feet and inches of petroleum which were in the tank or receptacle containing the same before the company began to run the contents from said tank, and the number of feet and inches of petroleum which remained in the tank after said run was completed; and all deductions made for water, sediment or the like, shall be made at the time such petroleum is measured; and within reasonable time thereafter said company shall, upon demand, deliver from the petroleum in its custody to the owner thereof, or to his assignee, at such delivery station on the route of its line of pipes as he may elect, a quantity of merchantable petroleum, equal to the quantity of petroleum run from said tank, or receptacle, which shall be ascertained by computation; except that the said company transporting said petroleum may deduct for evaporation and waste two per centum of the amount of petroleum so run, as shown by said run ticket;

90 and except that in case of loss of any petroleum while in the custody of said company caused by fire, lightning, storm or other like unavoidable cause, such loss shall be borne pro rata by all the owners of such petroleum at the time thereof. But said company shall be liable for all petroleum that is lost while in its custody by the bursting of pipes or tanks, or by leakage from pipes or tanks; and it shall also be liable for all petroleum lost from tanks at the wells where produced before the same has been received for transportation; if such loss be due to faulty connections made to said tanks; and said company shall be liable for all petroleum lost by the overflow of any tanks with which pipe line connections have been made, if such overflow be due to the negligence of such company; and for all the petroleum lost by the overflow of any tanks with which pipe line connections should have been made under the provisions of this act, but were not so made by reason of negligence or delay on the part of said company.

Acts 1879, Ch. 27; 1891, Ch. 44.

Sec. 3555. Charge for transportation and delivery.

7. Any company engaged in transporting petroleum of a gravity exceeding thirty-five degrees Baume at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines, may charge for receiving, transporting and delivering such petroleum not to exceed twenty cents per barrel for each barrel of forty-two gallons;

Provided, However, if where the point of delivery is without
91 this State, more than twenty cents per barrel be charged, then there shall be charged no greater sum than ten cents per barrel for receiving such oil and transporting the same that part of the distance which is within this State.

Acts 1891, Ch. 44.

Sec. 3556. Same—Time for commencement of charge—Deductions for waste and evaporation.

8. Any company engaged in transporting or storing petroleum of a gravity exceeding thirty-five degrees Baume at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines and tanks, shall make no charge for storing said petroleum until after the expiration of the month following that in which the oil was run and received into custody. But, it may charge for storing said petroleum of a gravity exceeding thirty-five degrees Baume at a temperature of sixty degrees Fahrenheit, for every day after the expiration of the month following that in which said oil shall have been run and received into custody, not to exceed one-fortieth of one cent per barrel of forty-two gallons for each day thereafter said oil shall continue to remain in its custody. And such company shall make no charge for water, sediment, waste and the like in transporting or storing any petroleum after the same has been gauged or measured, before the run of the same is made, except the two per centum for waste and evaporation hereinbefore mentioned.

Acts 1891, Ch. 44.

92 Sec. 3557. Discrimination prohibited.

9. No company engaged in transporting or storing petroleum by means of pipe line or lines and tanks shall charge, demand or receive from any corporation, company, association, person or persons a greater or less rate for the transportation or storage of petroleum than it charges, receives or demands from any other corporation, company, association, person or persons for the transportation or storage of petroleum of like gravity; and any shift, device or subterfuge made or attempted for the purpose of avoiding the provisions of this section shall be void.

Acts 1879, Ch. 27; 1891, Ch. 44.

Sec. 3558. Penalties—Damages for excessive charge.

10. Any company, its officers or agents, wilfully violating any of the provisions of sections two, three, four, five, six, seven, eight or nine, of this act, or charging for any of the services provided for in any of said sections, an amount in excess of that authorized by said sections, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars, nor more than one thousand dollars, and shall moreover be liable to the party

aggrieved for all damages sustained by him by reason of such excessive charges.

Acts 1891, Ch. 44.

Sec. 3559. Lien for charges.

11. Any company engaged in transporting or storing petroleum, shall have a lien upon said petroleum until all charges for
93 transporting and storing said petroleum are paid.

Acts 1879, ch. 27; 1891, ch. 44.

Sec. 3560. Negotiability of accepted orders and certificates.

12. Accepted orders and certificates for petroleum, issued by any company engaged in the business of transporting and storing petroleum in this State, by means of pipe line or lines and tanks, shall be negotiable, and may be transferred by endorsement, either in blank or to the order of another, and any person to whom the said accepted orders and certificates shall be so transferred, shall be deemed and taken to be the owner of the petroleum therein specified.

Acts 1879, ch. 27; 1891, ch. 44.

Sec. 3561. Receipts, certificates, etc.—Unauthorized issuance—Duplicates—Surrender—Loss—Cancellation.

13. No receipt, certificate, accepted order or other voucher, shall be issued or put in circulation, nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of, the company issuing or putting in circulation such receipt, certificate, accepted order or voucher,
94 or written evidence of liability. No duplicate receipt, certificate, accepted order or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order or other voucher shall be outstanding and uncancelled, except such original paper shall have been lost, in which case a duplicate plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued. No receipt, voucher, accepted order, certificate or written evidence of liability of such company on which petroleum, crude or refined, has been delivered, shall be re-issued, used or put in circulation. No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except upon affidavit of loss of such instrument made by the former holder thereof No duplicate receipt, certificate, voucher, accepted order or other evidence of liability, shall be made, issued or put in circulation until after notice of the

loss of the original, and of the intention to apply for a duplicate thereof, shall have been given by advertisement over the signature of the owner thereof in at least four successive issues of a daily or weekly newspaper published in the county where such duplicate is to be issued. Every receipt, voucher, accepted order, cer-
95 tificate or evidence of liability, when surrendered, or the petroleum represented thereby delivered, shall be immediately cancelled by stamping and punching the same across the face in large and legible letters with the word "cancelled," and giving the date of such cancellation; and it shall then be filed and preserved in the principal office of such company for the period of six years.

Acts 1879, ch. 27; 1891, ch. 44.

Sec. 3562. Sale, incumbrance, etc., without consent of owner.

14. No company, its officers or agents, or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or encumber, ship, transfer, or in any manner remove or procure, or permit to be sold, encumbered, shipped, transferred, or in any manner removed from the tanks or pipes of said company engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or owners thereof.

Acts 1891, ch. 44.

Sec. 3563. Monthly statements.

15. Every company now or hereafter engaged in the business of transporting by pipe lines, or storing crude or refined petroleum in this State, shall, on or before the tenth day of each month, make or cause to be made and posted in its principal business office in this State in an accessible and convenient place for the examination thereof by any person desiring such examination, and shall
96 keep so posted continuously until the next succeeding statement is so posted, a statement plainly written or printed, signed by the officer, agent, person or persons having charge of the pipes and tanks of said company, and also by the officer or officers, person or persons, having charge of the books and accounts thereof, which statement shall show in legible and intelligent form the following details of the business:

First: How much petroleum, crude or refined, was in the actual and immediate custody of such company at the beginning and close of the previous month, and where the same was located or held; describing in detail the location and designation of each tank or place of deposit, and the name of its owner.

Second. How such petroleum, crude or refined, was received by such company during the previous month.

Third. How much petroleum, crude or refined, was delivered by such company during the previous month.

Fourth. For how much petroleum, crude or refined, such company was liable for the delivery or custody of to other corporations, companies or persons at the close of the month.

Fifth. How much of such liability was represented by outstanding receipts or certificates, accepted orders or other vouchers, and how much was represented by credit balances.

Sixth. That all the provisions of this act have been faithfully observed and obeyed during the said previous month.

97 The statement so required to be made shall also be sworn to by said officers, agent, person or persons before some officer authorized by law to administer oaths, which oath shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such company, and with the facts sworn to, and that the statements made in the said report are true.

Act 1891, Ch. 44.

Sec. 3564 same. Specification of amounts—Duty to keep on hand oil equal to aggregate outstanding receipts, etc.

16. All amounts in the statements required by this act, when the petroleum is handled in bulk, shall be given in barrels and hundredths of barrels reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels or packages, the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum, and give the amount of each. Every company engaged in the business aforesaid, shall at all times have in their pipes and tanks an amount of merchantable oil equal to the aggregate of outstanding receipts, certificates, accepted orders, vouchers, acknowledgments, evidences of liability, and credit balances, on the books thereof.

Act 1891, Ch. 44.

98 Sec. 3565. Penalties for unauthorized issuance of receipts, etc.

17. Any company, its officers or agents, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this act, or shall do or cause to be done, any of the acts prohibited by the thirteenth section of this act, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars, and undergo imprisonment not less than ten days nor exceeding one year.

Act 1891, Ch. 44.

Sec. 3566. Pealties for unauthorized sales, incumbrances, etc.

18. Any company, its officers, or agents, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or re-

moved from the tanks or pipes of such company, any petroleum, crude or refined, without the written consent of the owner or owners thereof, shall be guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of one thousand dollars and undergo an imprisonment of not less than ninety days and not exceeding one year.

Act 1891, Ch. 44.

99 Sec. 3567. Penalties for failure to make reports.

19. Any company engaged in the business of transporting by pipe lines or storing petroleum, crude or refined, and each and every officer or agent of such company who shall neglect or refuse to make the report and statement required by the fifteenth section of this act, within the time and the manner directed by said section, shall forfeit and pay the sum of one thousand dollars, and in addition thereto the sum of five hundred dollars for each day after the tenth day of the month that the report and statement required by said section fifteen shall remain unposted as therein directed.

Act 1891, Ch. 44.

Sec. 3568. Examination of companies.

20. The holder of any receipts, certificates, accepted orders, or other vouchers or evidences of liability, or the owners of oil in the custody of any such company described and referred to in this act, to an amount not less in the aggregate than ten thousand barrels of petroleum, crude or refined, may at any time present their petition to the circuit court of any county wherein such company may be engaged in business or have its principal office, or to any judge of said court in vacation, setting forth under oath, their ownership as aforesaid and desire for the appointment of examiners for the purposes of this section; and upon such petitioners giving bonds to be approved by the court or by the judge granting the order, that they will pay all expenses and costs that may accrue in the pro-
100 ceedings, the court, or any judge thereof in vacation, shall forthwith appoint such number of impartial, disinterested and expert persons as may be asked for in said petition, as examiners, and shall fix the amount of their compensation; and the court or judge by order, shall direct and empower such examiners to immediately inspect and measure all the petroleum, crude or refined, in the custody of any such company named in the said petition, on the day of such inspection, and to examine the books of said company relating to the issue and cancellation of receipts, certificates, accepted orders, vouchers, or evidences of liability, and to its open accounts with persons, companies or corporations with whom it deals in the receipt and delivery of crude or refined petroleum. Such examiners when so appointed shall each immediately be sworn before any authorized officers to perform his duties with fidelity and according to law, which oath shall be reduced to writing, signed and filed with the clerk, and they shall then make immediate inspection, examination and measurements, as required by said petition and order

and by this act. And it shall be the duty of each and every such company, its officers, agents and employes, to give immediately upon request of any such authorized examiners, all the information demanded in said petition and required by this act to be reported, and also full access to the offices, tanks, pipes, books and accounts of such company. Upon the completion of such inspection, measurement and examination, it shall be the duty of the examiner or examiners, or in the event of the death, resignation, declination or inability to act of any of them, then the others, or any of them within ten days after their appointment to make to the court appointing them, a written, signed and sworn report of such examination, inspection and measurement, and file the same of record with the clerk thereof, which report shall show:

101

First. How much merchantable and also how much unmerchantable petroleum, crude or refined, they found in the tanks and lines of such company, and where the same was located or held by description of tanks.

Second. For the custody or delivery of how much crude or refined petroleum they found such company to be liable at the same date.

Third. How much of such liability was represented by outstanding receipts, accepted orders, certificates, vouchers or evidences of liability, and how much by credit balances.

Act 1891, Ch. 44.

Sec. 3569. Offense by examiners.

21. Any examiner so appointed as aforesaid who shall make any false examination, inspection, measurements or report, or shall make known directly or indirectly to any person any information he may become possessed of in the course of his examination, inspection or measurement, except by means of his report made and filed in accordance with this act, or who shall receive directly or indirectly any fee, reward or benefit, or the promise of any fee, reward or benefit, other than that provided by this act, for the performance or non-performance of any duty or thing contemplated by this act, or connected with his said employment, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of one thousand dollars, and may at the discretion of the court, be confined in jail not to exceed one year.

102

Act 1891, Ch. 44.

Sec. 3570. Same—refusal to furnish information, etc.—Penalties.

22. Any officer, agent, manager, superintendent or employe of any company engaged in the transportation by pipe lines of petroleum, crude or refined, or the storage thereof, who shall refuse or neglect after demand made to give to any authorized examiner full and free access to any and all offices, pipes, tanks, accounts, books and vouchers required by him in the pursuance of his appointment

and this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars, and may at the discretion of the court be confined in jail not to exceed one year.

Act 1891, Ch. 44.

Sec. 2851. Repeal.

23. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Act 1891, Ch. 44.

103 Sec. 2833. Corporations for transportation of natural gas, water, etc.—Powers—Duties and liabilities as common carriers.

24. That a company organized for the purpose of transporting natural gas, petroleum or water, necessary for use in carrying out the provisions of this act in piping and transporting natural gas and petroleum or for boring for the same, through tubing and pipes, may enter upon any land for the purpose of examining and surveying a line for its tubing and pipes, and may appropriate so much thereof as may be deemed necessary for the laying down of such tubing and piping, and for the erection of tanks and the location of stations along such line, and the erection of such buildings as may be necessary for the purpose aforesaid; such appropriations shall be made and conducted in accordance with the law providing for compensation to the owners of private property taken for public use; Provided, That no dwelling house, yard or garden, shall be taken for such purpose, nor shall any oil tank, gas or oil pipe line be erected or laid within one hundred feet of any occupied dwelling house without the consent of the owner thereof. And so far as the rights of the public therein are concerned, the county commissioners as to public roads, and the council of any municipal corporation, as to streets and alleys, in their respective jurisdiction, may, subject to such regulations and restrictions as they may prescribe, grant to such company the
104 right to lay such tubing and piping therein; Provided, however, The right to appropriate for any of the purposes herein above specified shall not include or extend to the erection of any tank, station or building, or lands thereof, or to more than one continuous line of pipe or tubing, or land therefor, in or through a municipal corporation without the council first consents thereto; and all excavations shall be well filled by such company and so kept by it, in all cases. Such company shall, for the purpose of transporting natural gas, oils and water, be considered and held to be a common carrier, and subject to all the duties and liabilities of such carriers under the laws of this State (Acts 1891, ch. 113).

Sec. 1719. Payment of Compensation—Effect of setting aside or recommit-el of report—Proceedings by pipe line companies, organized for transporting carbon oil or natural gas, by pipes or otherwise, to condemn easement.

20. After such report has once been made, whether it be set aside, recommitted, or new commissioners appointed or not, the applicant upon paying into court the sum ascertained by such report, with legal interest thereon from the date of the report until payment, may, notwithstanding the pendency of further proceedings, enter upon, take and use for the purposes specified in the application, that part of the land in respect to which such payment is made and
105 possession taken, or where payment has been made without taking such possession in a pending case, it shall have the same effect as if such payment were made or possession taken, or both, in a case hereafter commenced; and no order shall be made or any injunction awarded by court or judge to stay him in so doing, unless it be manifest that applicant is insolvent or that he or his officers, agents or servants, are transcending their authority or that such interposition is necessary to prevent injury which cannot be adequately compensated in damages.

Provided, however, that if the company desiring to condemn be a pipe line company organized for the purpose of transporting carbon oil or natural gas, or both, by means of pipes or otherwise and seeking to condemn an easement, then in addition to the procedure in this chapter provided, such company, at its election, may proceed as follows: the company shall attempt to agree with the owner of the land as to the damage properly payable for such easement, if such owner can be found and is sui juris, and failing to agree, the applicant shall tender to the owner a bond with sufficient surety to secure him or her in the payment of damages, to which bond a plan shall be attached showing the route of the proposed pipe line over said land; upon acceptance of said bond the right of the applicant to enter upon the enjoyment of its easement shall be complete; if the owner refuse to accept said bond, or cannot be found or is not sui juris, said bond shall then be presented to the circuit court
106 of the county in which the land is situated, or to a judge thereof in vacation after five days' written notice shall have been given to the owner of said land, or to his guardian or committee if he be not sui juris, and if said owner cannot be found, or his guardian or committee, being not sui juris, then after five days' written notice posted upon the said land; said notice shall state the time and place for the presentation of said bond, and shall state that unless exceptions to the form, amount or surety of said bond be filed within three days after presentation, said bond shall be approved by the court. Any trust company authorized to do business in the State of West Virginia shall be considered a good and sufficient surety on such bond.

If no exception to the said bond be filed within the said time, the said court shall approve the said bond and shall direct the said bond, with the plan thereto attached, be filed for the benefit of the owner of said land and of said applicant; if any exception to the said bond be filed within three days after the presentation thereof, the said court shall thereupon fix a day not more than five days thereafter for the hearing thereof, and may require evidence, either by testimony or otherwise, as to the sufficiency of the sureties or surety; and as to

the sufficiency of the amount of the bond, and may in its discretion require new surety or may require bond for a larger amount or in more satisfactory form, and when the court shall approve said bond it shall be ordered to be filed as aforesaid; upon the approval
107 of said bond and the filing thereof the right of the applicant to enter upon the enjoyment of its easement shall be complete.

Upon petition of either the property owner or the applicant, at any time after said bond shall have been presented and filed, five disinterested freeholders shall be appointed as in this chapter provided, to serve as commissioners to ascertain what will be a just compensation to the person entitled thereto for the easement so appropriated, and thereafter the proceedings shall be in accordance with the provisions of this chapter.

Sec. 8563. Carriers and transportation subject to regulation, including transportation of oil, etc., by pipe lines and telegraph, telephone and cable companies.

The provisions of this Act shall apply to any corporation or person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, or any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad
108 and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States or the District of Columbia, to any other State, Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry, either in the United States or an adjacent foreign country: provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory, as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

Mr. Crawford. It is stipulated that Form No. 200, page 4, attached to the bill of complaint and filed therewith in this suit is the
109 original form of the return under Chapter 5 of the Act of the Extra Session of the Legislature of 1919 of the State of West Virginia, and also of the Rules and Regulations adopted and issued by the State Tax Commissioner of the said State under date of June 30, 1919 and relating to the said Act; the same being the exhibit referred to throughout the pleadings as "form of Tax Return."

110 JOHN J. KENNEY, a witness caled on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Crawford:

Q. Mr. Kenney, where do you reside?
A. Pittsburgh, Pa.
Q. What is your business?
A. My title is Assistant Superintendent.
Q. Of what?
A. Of The Eureka Pipe Line Company.
Q. That is the company which is the plaintiff in this case, is it?
A. Yes sir.
Q. How long have you been in the employ of The Eureka Pipe Line Company?
A. Since its incorporation in the year 1891.
Q. How long have you been Assistant Superintendent of The Eureka Pipe Line Company?
A. About twelve or thirteen years.
Q. What are your duties as Assistant Superintendent of The Eureka Pipe Line Company?
A. I direct the movement of oil through the various lines of the company.
Q. Are you familiar with the pipe line system of The Eureka Pipe Line Company as it stands at the present time?
A. Yes sir, I am.
Q. Where is that pipe line system located? I mean now in what State of the Union or States?
111 A. It is located in the State of West Virginia.
Q. Is there any part of it located outside the State of West Virginia?
A. No sir.
Q. Are you familiar with the various workings of that pipe line system? I mean are you familiar with their geographical position?
A. Yes sir, I am.
Q. And also with their relation to each other, and how they connect with each other at different points.
A. Yes sir.
Q. And are you generally familiar with the operation of the system?
A. Yes sir, I am.

Q. Have you been so for a number of years?
A. Yes sir.
Q. I understood you to say that you entered the employ of the company in 1891?
A. Yes sir. Well, I was employed by the company that was doing the business prior to the incorporation of The Eureka Pipe Line Company. I started to work for this company in July, 1900.
Q. In 1900?
A. I mean 1890, I think it was, in July, 1890.
Q. What company was that?
A. That was an extension of the South West Pennsylvania Pipe Lines.
112 Q. What was the first part of the pipe line system of The Eureka Pipe Line Company to be constructed?
A. The first general work done in West Virginia, if I remember correctly, was the main line from Eureka to Morgantown.
Q. Perhaps we shall get on better if we have a map to check up. I show you what purports to be a map of the State of West Virgina or a part of the State of West Virginia with certain red lines laid down upon it. Have you seen this map before?
A. I saw it before, this morning.
Q. What are those red lines supposed to indicate on the map?
A. They represent the general lines of The Eureka Pipe Line Company.
Q. And do they correctly represent them, speaking geographically?
A. Yes sir.
Q. Won't you refer to this map and answer again what part of the system was first constructed by The Eureka Pipe Line Company after it began business?
A. Do you desire to know the first line in West Virginia?
Q. No, answer the question. Do I understand that it was that part of the system which runs from Eureka to Morgantown as shown on this map?
A. That was my answer. The first line was a three inch line from Mt. Morris to Morgantown, built before the incorpora-
113 tion of The Eureka Pipe Line Company.
Q. But the first that was built by The Eureka Pipe Line Company was the line from Eureka to Morgantown?
A. Yes sir.
Q. Passing through Braden and Downs as at present?
A. Yes.
Q. When the company went to West Virginia was there already a portion of a pipe line built?
A. Yes.
Q. Where and between what points?
A. A three inch discharge line from Mt. Morris, Pennsylvania to Morgantown.
Q. Do you know whether that was taken over by The Eureka Pipe Line Company at that time?
A. Yes, that portion of it in West Virginia?

Q. And was it subsequently operated by The Eureka Pipe Line Company?

A. Yes sir.

Q. What oils passed through that portion of the line from Mt. Morris to Morgantown?

A. Oil produced around Mt. Morris station.

Q. Where is Mt. Morris?

A. Mt. Morris is located in Greene County, Pennsylvania, not a great distance from the state line of West Virginia.

Q. What was the purpose in building the pipe or line from Eureka to Morgantown? I mean to say, what source of oil was reached by that stretch of line?

114 A. There was some local production tributary to Eureka Station, and also some oil reached that point from Ohio.

Q. And it was the oil from those two sources which was transported through that line from Eureka to Morgantown?

A. Yes sir.

Q. When if ever was oil brought in by a connection with the South West Pennsylvania Pipe Lines?

A. About that time the lines from Ewings Station located in the South West Pennsylvania Pipe Lines, was brought in to Morgantown.

Q. Ewings is where, in what State?

A. In Pennsylvania.

Q. Are the lines of the Pennsylvania Pipe Lines shown in black on this map running south from Ewings to the state line?

A. Yes sir.

Q. About five parallel lines?

A. Yes sir, five parallel lines.

Q. What does that indicate, the five parallel lines? What do they indicate? As distinguished from one line?

A. That indicates a system of five lines.

Q. Five pipes?

A. Yes sir, five pipes to Morgantown.

Q. At what point did the South West Pennsylvania Pipe Lines or the pipes composing it cross the Pennsylvania boundary into West Virginia when they were first extended?

A. They crossed the state line about between twelve
115 and one half miles and thirteen miles from Morgantown.

Q. Is there any particular town at that place?

A. No sir.

Q. Is there any station there?

A. Not at the state line, no sir.

Q. Does the company still receive oil from the South West Pennsylvania Pipe Lines at that same point to-day?

A. Yes sir.

Q. How long has it done so?

A. It has done so continuously since the lines were constructed.

Q. The oil as brought over from Pennsylvania which came to the boundary through the pipes of the South West Pennsylvania Pipe Lines, was taken to what point in the State of West Virginia?

A. To Morgantown Station.
Q. Has that been true ever since?
A. Yes sir.
Q. Is that the practice to-day?
A. Yes sir.
Q. Is the oil received from the pipes of the South West Pennsylvania Pipe Lines at the state boundary and then carried as you have testified to Morgantown, distributed at any point in between the state boundary and Morgantown, any part of it?
A. There is some of this delivered to the Pure Oil Company about two miles west of Morgantown.
Q. How long to your knowledge has The Eureka Pipe Line Company been delivering oil at that point to the Pure Oil Company?
116 A. About four or five years.
Q. Can you fix more accurately the point in West Virginia at which deliveries are made of this oil to the Pure Oil Company?
A. About two miles west of Morgantown, in the direction of the Pennsylvania State line.
Q. In what county?
A. In Monongalia County, West Virginia.
Q. Is there anything on this map to indicate the line of the Pure Oil Company? And if so point it out and describe it?
A. Yes sir, there is a branch line from one of the Pennsylvania eight inch lines leading to the tanks of the Pure Oil Company.
Q. Describe it on that map. I don't want you to tell me how it is in that field, but what is there on that map to show it.
A. This map shows the line leading to the tanks of the Pure Oil Company.
Q. What kind of a line is it, what is the color of it?
A. It is a green line. The line to the tanks of the Pure Oil Pipe Line Company is represented by a red line.
Q. By that little short red line?
A. Yes sir.
Q. Is the line which carries the oil from your main line to the Pure Oil Company's line indicated on this map by a short
117 red line which leaves "main line" just a short distance west of Morgantown in an apparently northeasterly direction?
A. Yes sir.
Q. What is it on this map which shows if anything the line of the Pure Oil Company?
A. There is a green line showing the direction of the Pure Oil Company's pipe line east to Marcus Hook, Pennsylvania.
Q. Do you know what becomes of the oil which is delivered by The Eureka Pipe Line Company to the Pure Oil Company at the point you are testifying about? I mean what its future course is in transportation?
A. It is delivered by them through this pipe line to Marcus Hook.
Q. Where is Marcus Hook?
A. Marcus Hook is on the Atlantic seacoast, Pennsylvania, on the Delaware River, Pennsylvania.

Q. At any rate is it true that that line of the Pure Oil Company, which is marked by a green line here on this map, pursues generally a northeasterly course across the boundary into Pennsylvania?

A. Yes sir.

Q. And that the oil which your company delivers to the Pure Oil Company at the point you have referred to, west of Morgantown, is transported through that line into the State of Pennsylvania and beyond?

A. Yes sir.

118 Q. Or at any rate into the State of Pennsylvania?

A. Into the State of Pennsylvania.

Q. With the exception of the deliveries made to the Pure Oil Company, which you have just explained, is there or has there ever been any deliveries whatever of oil that has come from over the South West Pennsylvania Pipe Lines to Morgantown, except those to the Pure Oil Company?

A. No sir.

Q. In other words with that exception the oil transported from the South West Pennsylvania Pipe Lines over the course you have described to Morgantown goes through and has always gone through without break to Morgantown, is that true?

A. Yes sir.

Q. After this line that you have described from Eureka to Morgantown was built, what became of the oil that was brought to Morgantown through that line?

A. That oil is delivered——

Q. What became of it after that line was built?

A. The oil was delivered to our connecting carrier.

Q. Meaning by that what?

A. Meaning by that the Southern Pipe Line Company.

Q. Where was it delivered to the Southern Pipe Line Company?

A. At the state line in West Virginia, in Pennsylvania.

Q. Can you designate that point at the state line by any name? Is there any town there?

A. No sir.

Q. Is there any station there, I mean pipe line station

119 there?

A. No sir.

Q. Then how did the oil get to that point from Morgantown, or does it get there if you like, speaking generally?

A. Yes sir, it is pumped there through the lines of The Eureka Pipe Line Company.

Q. Are those lines to which you refer the ones which are indicated on this map by seven red lines leading northeast from Morgantown and merging into black lines in the north side of the Pennsylvania boundary?

A. Yes sir.

Q. Do the seven red parallel lines indicate that number of pipes?

A. Yes sir.

Q. When were those pipes or the first of them built from Morgantown to make this connection with the lines of the Southern Pipe

Line Company? And when I refer to these pipes I mean to any one of them, I mean the beginning in that section?

A. The work was started in the year 1889, I believe, and completed the following year, 1890. I am not positive of those dates.

Q. Do you know whether that section of the line, whether one or more pipes composing it, was built and operated by The Eureka Pipe Line Company from the very start of the operations of The Eureka in West Virginia?

A. At first I believe there was one line, sir, that since has been operated by The Eureka Pipe Line Company.

120 Q. From the beginning?

A. From the beginning.

Q. From the beginning of its business in the State of West Virginia?

A. Yes sir.

Q. Is there or has there ever been any point between Morgantown and the state line of Pennsylvania on this section which we are speaking about, from which any deliveries have been made or are made?

A. No sir.

Q. That is a continuous stretch of pipe unbroken, is it?

A. Yes sir, across the line.

Q. Do I understand you that the oils that were received at Eureka either both from the neighborhood of Eureka, West Virginia or those from any other state and transported through this line which you have described, running from Braden and Downs to Morgantown—do I understand you to testify that all of those oils at first were carried right from Morgantown into Pennsylvania, that is to the junction of the Southern?

A. Not all of the oil. A portion of it was pumped north from Downs Station to Ewings Station.

Q. Is this at least correct, that all of it passed out of the State of West Virginia into the State of Pennsylvania?

A. Yes sir.

Q. Some of it over the lines you have described to the junction of the Southern and some from Downs to Ewings, passing the boundary of Pennsylvania where?

121 A. At the state line.

Q. That is correct as I have stated it in that instance, is it?

A. Yes sir.

Q. For how long if you know were the lines forming a part of the system of The Eureka Pipe Line Company which you have described operated without any further lines? In other words when was the next addition made?

A. In about two years following the completion of the first lines.

Q. Can you fix that approximately by the calendar year?

A. About 1892.

Q. What happened in 1892 in relation to the building of pipes?

A. Owing to an increase in the production of oil it became necessary to lay the second line.

Q. Increase where?

A. At Sistersville, West Virginia, a point intersecting this system of lines.

Q. Will you please indicate where Sistersville, West Virginia is?

A. Sistersville is located at the point on the map shown as Thistle Station.

Q. The word "Thistle" is simply the name of the station is it?

A. Thistle is the name of a farm on which the station is located.

Q. It is not the name of any town?

122 A. No, the name of a farm.

Mr. Crawford: The Court will understand that the name Thistle simply indicates a station at Sistersville, the latter name not being placed on the map for convenience.

The Witness: That is correct.

Mr. Avis: Thistle and Sistersville are the same.

Q. From where to where was the portion of the line to which you are now referring built?

A. The second line was built from Eureka Station to Morgantown Station, and a branch line from Thistle Station was built up to these original lines.

Q. What do you mean by saying that a second line was built from Eureka to Morgantown? You mean a second pipe?

A. A second pipe was laid, was built.

Q. What was the relation between that second pipe and the first pipe? The physical relation I mean, the geographical relation?

A. They lay parallel, side by side.

Q. Will you indicate on the map where this connecting line was as near as you can?

A. It intersects with our line from Eureka Station at a point called the Wick Junction, close to the point shown on the map as Meadville.

Q. Is it a red line about an inch and a half long shown on this map running from where the word "Thistle" is printed down

123 to the point near Meadville which you speak of?

A. Yes sir.

Q. What oils did you get in the first instance and transport through that branch?

A. The production of oil originally in the Sistersville field was pumped through that line.

Q. That was all at first was it?

A. At first, yes sir.

Q. And when it reached the main line which you have described as running from Eureka towards Morgantown what happened to it?

A. It was pumped through the main line on to Braden Station and from there on through Downs Station to Morgantown.

Q. And what happened to it at Morgantown?

A. It was pumped from Morgantown through our system connecting with the Southern Pipe Lines.

Q. What was the next portion of the system that was constructed? I do not refer of course to the construction of small gathering lines. I am speaking of specific portions of the main system?

Mr. Avis: I have no objection to a leading question. You may suggest what you want and it will save a lot of time.

A. In the course of two or three years a third line was built from Braden Station to Morgantown.

Q. What do you mean by a third line, a third pipe?

A. A third pipe was laid.

124 Q. Did that effect any change in the operation other than to provide more capacity?

A. No sir.

Q. What is the next increment in the system? And I would say that you need not for the present note the building of lines to simply increase capacity. I am trying to get from you a progressive picture of the growth of the system, of the main parts of the system, geographically considered. With that in view please state what was the next portion of the system which was constructed?

A. About 1895 or 1896 we had a line laid from Elm Run to Braden Station.

Q. What was the object in laying that? That is, what was originally the object of laying that section of the system?

A. The production of oil had increased in the vicinity of Elm Run, so that a line was necessary to properly handle the oil from Elm Run to Braden.

Q. I will ask you whether all the oil thus far in your system produced in the State of West Virginia and carried through one or the other portions of the lines of The Eureka Pipe Line Company as you have described it, was of some particular grade or some particular quality?

A. Yes sir, it was all Pennsylvania grade oil.

Q. That may seem singular to the court that Pennsylvania grade oil should be produced in West Virginia. Will you please

125 state what is the meaning in the business of Pennsylvania grade oil?

A. The general grade of oil produced in Pennsylvania and West Virginia and southeastern Ohio being similar, it is classed and known as Pennsylvania grade oil.

Q. The name then is used as a designation of kind or quality, is it, and not of the geographical source of origin?

A. Yes sir, it is known as a kind and quality of oil.

Q. What grade of oil is it, high or low or middle class as compared with others?

A. It is considered a high grade oil.

Q. What is its relation in the market in point of value as compared with other oils?

A. The price of Pennsylvania crude oil at present is $4.50 a barrel.

Q. Where?

A. In Pennsylvania.

Q. Do you mean anywhere in the State or at the depot?

A. Anywhere within the State—at the wells.

Q. And does that same price prevail in West Virginia at the wells for the same quality of oil?

A. Yes sir.

Q. How does that compare as to more or less with the price of other grades of crude oil which are transported through your pipe line system? I don't mean you to give me dollars or cents, but I want it as more or less.

A. It is more than the price of other oils.

126 Q. In other words is it true that the Pennsylvania grade or crude oil is the highest priced grade there is?

A. Yes sir.

Q. Very much the highest priced, is it not?

A. Yes sir.

Q. You transported then for a while from Elm Run to Braden certain quantities of Pennsylvania grade crude oil, did you not?

A. Yes sir.

Q. And from Braden you transported it, I suppose, on to Morgantown, through some part of the line which you have described?

A. Yes, on to Downs Station and to Morgantown.

Q. And from there it joined in the general current of oil and went over into Pennsylvania?

A. Yes sir.

Q. Tell me the next section of your system which was constructed?

A. About the year 1900 a line was constructed from Sand Fork to Downs Station.

Q. What was the occasion of constructing that line?

A. The production of oil in and around Sand Fork Station?

Q. In West Virginia, is it?

A. Yes, in West Virginia.

Q. What quality or grade of oil was that?

A. Pennsylvania grade oil.

Q. What county of West Virginia is Sand Fork situated in?

127 A. In Gilmer County.

Q. And is Sand Fork the name of a village or town?

A. Sand Fork is the name of a village.

Q. And has your company a station there?

A. Yes sir.

Q. And that is indicated on the map by that name, is it?

A. Yes sir.

Q. The line of which you are now speaking is the one which runs northeasterly from Sand Fork to Downs?

A. Yes sir.

Q. Part of the way being a single red line and part of the way a double red line?

A. Yes, it is a single line to Ten Mile Station, and a double line from that point to Downs.

Q. You mean I suppose a single pipe, don't you?

A. A single pipe.

Q. To Ten Mile Station?

A. Yes.

Q. And a double pipe from there?

A. Yes, to Downs.

Q. I think it will be clearer if you will distinguish between the

word "line" as indicating a portion of the system with however many pipes or however few, and the word "pipe" as indicating literally the physical pipes. I think the Court will understand the thing better.

A. Very well.

Q. What became of the Pennsylvania crude oil that was
128 pumped from Sand Fork to Downs Station?

A. It was pumped from Downs Station to Morgantown and part of it to Ewings.

Q. What went to Morgantown went through the same course as the other oil you have testified to, did it?

A. Yes.

Q. Passing all into Pennsylvania?

A. Yes sir.

Q. And into the lines of the Southern Pipe Line Company?

A. Yes.

Q. Then what was the next portion of the system constructed, bearing in mind what I mean by that some substantial portion, not any gathering lines?

A. There was a gradual increase in the number of pipes throughout the system of The Eureka Pipe Line Company for the course of several years, up to the point as indicated by the map.

Q. You mean by that what might be called the main artery of the system was extended from Elm Run toward the southwest gradually?

A. Yes, it was extended from Elm Run south into the State of Kentucky or to the boundary line of Kentucky, commencing about 1901 or 1902, I don't remember positively.

Q. What do you mean by "commencing?"

A. The construction of that line was started.

Q. Beginning where?

A. Beginning at our Elm Run Station.

129 Q. And working in what direction?

A. Working south to the Kentucky State line.

Q. How many years did it take you to get to the Kentucky State line?

A. It required about almost a year to construct that line.

Q. What were the reasons for the company's constructing that portion of the system?

A. The finding of crude oil in the State of Kentucky.

Q. Before we go any further, is the portion of the system to which you are now referring that which has been shown on this map part of the way by two parallel red lines and part of the way by three or four parallel red lines and extending southwesterly from Elm Run to a point on the Kentucky boundary? Is that the course?

A. Yes.

Q. That is what you are talking about?

A. Yes.

Q. And what is the point on the Kentucky boundary?

A. Tug River is the Kentucky boundary.

Q. Is Tug River a village or is it simply the name of a station?

A. Tug River is the name of our station.

Q. Is there any town or village there?

A. No sir, it is the name of the river at that point.

Q. You said that the reason for extending this line was the discovery of crude oil in Kentucky?

A. In Kentucky, yes.

130 Q. What kind of oil was discovered there, I mean what the trade name of it?

A. Somerset oil.

Q. Was that subsequently transported? I mean was all of that grade subsequently transported through this line?

A. Yes sir.

Q. I mean through the portion of it that you are now describing?

A. Yes sir.

Q. Has it been so transported continuously or substantially so ever since?

A. Yes sir.

Q. What is the general quality of Somerset crude as compared with Pennsylvania grade?

A. It is somewhat inferior to Pennsylvania grade oil.

Q. Is it lighter or heavier?

A. It is a heavier oil.

Q. How about the color?

A. And a darker color.

Q. Can the two be intermixed without damage?

A. No sir, they cannot.

Q. What is the market price of Somerset oil if you know in the same market where the Pennsylvania grade is worth $4.50?

A. The price of Somerset crude is $2.85 as compared with $4.50 for Pennsylvania grade

131 Q. Since the discovery of Somerset crude in Kentucky and the beginning of its transportation through the lines that you have described, have there been other discoveries of oil in the State of West Virginia itself?

A. Yes sir.

Q. Will you name some of the different points in different parts of the State where that is true?

A. Crude oil was discovered in Lincoln County, West Virginia, tributary to Hamlin Station.

Q. What kind of crude oil is that?

A. Pennsylvania grade.

Q. When you say tributary to Hamlin Station you mean so situated that it can be piped into Hamlin Station?

A. It is gathered through pipes to Hamlin Station.

Q. Is Hamlin Station one of the stations on the main line from Tug River to Elm Run?

A. Yes sir.

Q. And so indicated on the map, is it not?

A. Yes sir.

Q. That was when about?

A. I should judge about 1904.

Q. Name some other discoveries of crude oil in West Virginia in other fields than what have been given?

A. In the year 1912 what is known as the Blue Creek field was discovered, although for several years prior to that time there was a local production tributary to our Caldwell, Flat Rock, and Green Creek Stations in that general vicinity.

132 Q. State where the Blue Creek field is, denominating it by counties?

A. It is located in Kanawha County, West Virginia.

Q. And the stations to which you refer as Green Creek, Caldwell and Flat Fork are shown on the map, are they not, under those names?

A. Yes sir.

Q. Which, if any, of those three is a station on your main line from Kentucky north?

A. Flat Fork is the only main line station.

Q. In what county are the stations of Flat Fork, Caldwell and Green Creek situated?

A. Roane County.

Q. The stations marked Caldwell and Greek Creek appear to be on some other line than the main line. What was it at that time?

A. They are what is known as local field stations.

Q. What do you mean by a local field station?

A. A station located off from the main system and which oil is gathered into from some local point.

Q. Then I infer that the line indicated by a single red line on this map which runs out from Flat Fork Station and from which the Green Creek and Caldwell stations seem to be indicated, was a subordinate line which you say existed before the Blue Creek field was opened up?

133 A. Yes sir.

Q. And that was extended there for the purpose of getting local production?

A. Yes sir.

Q. Without going any further into detail is it the fact during the various periods as to which you have testified and since that time new fields or sub-fields in the State of West Virginia have come into operation and have been connected up in one way or another with the pipe line system of The Eureka Pipe Line Company?

A. Yes sir.

Q. Has that all been Pennsylvania grade crude?

A. Yes sir, except a very small amount of oil produced in Cabell County.

Q. When was that first brought in, approximately when?

A. Approximately in 1907 and 1908.

Q. What does that amount to per annum in round figures?

A. The production varied, but it was about fifteen hundred barrels per month.

Q. You say "was." During what period are you speaking?

A. During a period of several years after it first commenced.

Q. How much was it in the twelve months ending June 30th, 1919?

134 A. I would judge not over three hundred barrels per month.

Q. Does that mean an average for the year?

A. Yes sir.

Q. That would make not over thirty six hundred barrels in the twelve months?

A. Yes sir.

Q. Is that a large or a small amount of oil in comparison with what your company transports?

A. A very small amount.

Q. What is the grade or quality of Cabell oil as compared with other oils?

A. It is inferior in grade to Pennsylvania grade oil.

Q. How does it compare with Somerset crude?

A. It is almost similar in grade to Somerset oil.

Q. What has been the practice of your company in regard to transporting Cabell oil, whether it has been transported with any other kind or not?

A. The Cabell oil is transported in connection with Somerset oil.

Q. You mean to say that it flows right into the same pipes in which the Somerset oil is being transported?

A. Yes sir.

Q. Has it about the same commercial value as Somerset?

A. Yes sir.

Q. Is it received commercially as if it were Somerset?

A. Yes sir.

135 Q. You mean to say, you make deliveries of one or the other in satisfaction of a tender of either one? This Cabell oil that you pump into the lines, may it be delivered as Somerset oil or what is your practice about that?

A. It is delivered under a distinct tender calling for so much Cabell oil, but it is agreeable to the refineries that we deliver that with the Somerset oil as a mixture.

Q. It is practically the same oil is it not, by a different name?

A. Yes sir.

Q. The Somerset oil which has been transported since the date you name through the main lines, what has been done with it? We have carried it along as far as Elm Run as I recollect. Without specifying any details about particular pipes, which I shall ask you about later, I want to know in a general way where it has been transported to?

A. The oil is pumped from Elm Run through our system to Morgantown, and from that point it is delivered to our connecting carrier at the state line.

Q. Name the connecting carrier?

A. The Southern Pipe Line Company.

Q. You mean to say that all of the Somerset crude oil which you receive is carried through your system and delivered to the Southern Pipe Line Company at the State line of West Virginia?

A. Yes sir.

136 Q. And has that always been so?

A. There was a slight exception to that rule about ten years ago.

Q. What was that exception?

A. We delivered the oil or a portion of that Somerset oil from Downs to Ewings Station in the South West Pennsylvania Pipe Lines.

Q. At any rate it was all delivered to either one or two connecting carriers in the State of Pennsylvania, was it? Either one or the other of the two connecting carriers?

A. Yes sir, with another exception.

Q. What is that exception?

A. For a time a portion of it was delivered to the refinery of Parkersburg from our Elm Run Station, but only a small portion of it.

Q. When was that?

A. That was about when we first started to receive that oil, along about 1902 or 1903 I should judge.

Q. How long did you deliver any part of it to Parkersburg?

A. For about a year or a year and a half.

Q. Since the expiration of that year and a half have you delivered any part of the Somerset oil which you received from Kentucky to anybody within the State of West Virginia except to your connecting carriers at the Pennsylvania state line?

A. No sir.

137 Q. And confining your answer now to the twelve months ending June 30th, 1919, did you during that twelve months deliver any part of the Somerset oil which you received from Kentucky to anybody whatsoever within the State of West Virginia except to the connecting carrier or carriers at the Pennsylvania state line?

A. No sir.

Q. And is it true that all of it was transported across that state line into the State of Pennslyvania?

A. Yes sir.

Q. What about this Cabell oil? What has been done with that since you began to receive it? When I say "what has been done with it" I mean trace its general course to its final destination?

A. It has followed the general course of the Somerset oil.

Q. And is it true then that with the possible exception of that period in 1902 or 1903 when you say some of the Somerset oil went to Parkersburg, with the possible exception of that is it true that all the Cabell oil you received has passed through your system and out into the State of Pennsylvania?

A. Yes.

Q. Into the pipes of one or the other of your connecting carriers?

A. Yes sir.

138 Q. And confining yourself now to the twelve months ending June 30th, 1919, is it the fact that all of the Cabell oil received by you during that twelve months passed through your lines and out into the State of Pennsylvania into a connecting carrier?

A. Yes sir.

Q. I see apparently a part of your system running from Thistle Station on the Ohio River to a place called Littleton. When was that built? Look at the map if you wish?

A. That was built about 1895, that line.

Q. What was the purpose of building that piece of line, what was the reason for it?

A. To take care of the production at Sistersville and some other points close by.

Q. And all within the State of West Virginia?

A. Some of the oil received at the Thistle Station comes from Ohio.

Q. Has that always been so since this connecting link from Thistle to Littleton was built?

A. Yes sir.

Q. What grade of oil is it that is produced in West Virginia around Thistle Station and around Sistersville?

A. Pennsylvania grade oil.

Q. What kind of oil did you get at that station from Ohio?

A. Pennsylvania grade oil.

Q. And these two facts have been true from the time
139 that branch has been built? In other words you have not received anything but Pennsylvania grade out there?

A. With the exception of a few years.

Q. When were those years?

A. Possibly 1904 or 1905, we received a grade of oil from the Buckeye Pipe Line Company in Ohio known as Newcastle oil, an inferior grade of oil as compared to the Pennsylvania grade oil.

Q. When did you stop getting that at that point?

A. About 1906.

Q. Since 1906 is it true that all the oil you received from the Buckeye Pipe Line Company or any other pipe line at Thistle and also all the oil received there produced in the State of West Virginia was Pennsylvania grade?

A. Yes sir.

Q. Confining yourself to the period 1906, that is since you say nothing but the Pennsylvania grade was piped, tell me what became of that crude?

A. The oil is pumped by the Thistle Station to Littleton and to Braden.

Q. Take one at a time. What becomes or what has become of that which is pumped to Littleton?

A. That all was delivered or pumped by Littleton Station to Ewings Station in Pennsylvania.

Q. Over what line?

A. Over the Pennsylvania state line.

140 Q. You mean over a part of the system of the South West Pennsylvania Pipe Lines?

A. Yes sir.

Q. Is the pipe through which it was so pumped indicated on this map by a single black line running from the state line near Littleton to Ewings?

A. Yes sir.

Q. I notice on the map apparently starting from Littleton and running up into Pennsylvania a green line. What does that indicate?

A. That indicates the West Virginia Pipe Lines Company's lines.

Q. That is a separate concern is it?

A. Yes sir.

Q. It is not any part of the system of The Eureka Pipe Line Company?

A. No sir.

Q. Does your company make any delivery to the West Virginia Pipe Line Company?

A. Yes sir.

Q. Where? I mean at what point?

A. We deliver them oil from our Littleton Station.

Q. How long have you been in the habit of doing that?

A. About two years.

Q. What grade of oil do you deliver to them?

A. Pennsylvania grade oil.

Q. Over what part of your system does that come?

A. That comes from our Thistle Station through Littleton.

141 Q. The line of the West Virginia Pipe Line Company starts where?

A. It starts close to our Littleton Station in West Virginia.

Q. And what is the general course of it, where does it run to?

A. It runs in a northwesterly direction into Pennsylvania.

Q. Crossing the state line?

A. Yes sir.

Q. Does it go to any particular place in Pennsylvania?

A. It goes to or close by Coreopolis, Pennsylvania.

Q. And is it true that all the oil which you deliver to the West Virginia Pipe Line Company is transported across the state boundary into Pennsylvania?

A. Yes sir.

Q. By its lines?

A. Yes sir.

Q. Then to sum up, is it the fact that all the oil which you have received over the section of your Thistle Station to Littleton, with the exception of a few years that you spoke about during which you received Newcastle crude, that is — it true that with that exception all the oil you have so received has been transported across the state line of Pennsylvania either to Ewings or by the line of the West Virginia Pipe Line Company to some point on its line?

142 A. Yes.

Q. Confining yourself now particularly to the twelve months ending June 30th, 1919, is your answer the same?

A. Yes sir.

Q. I notice in the extreme northern part of West Virginia some red lines which seem to be detached. Will you explain them? You can refer to them by geographical name or the name of a town or anything else you like?

A. We have a station in the extreme northern end of West Virginia known as Brice Station, to which point there is some local Pennsylvania grade oil gathered. We also receive at Brice Station, Pennsylvania crude oil from the Buckeye Pipe Line Company in Ohio, and from the South West Pennsylvania Pipe Lines in Pennsylvania.

Q. The Brice Station seems to be some distance away from the Ohio River, is that the fact?

A. Yes, sir.

Q. How is the connection made between the Ohio River and Brice? By other pipes of your system?

A. By other pipes of our system crossing the Ohio River.

Q. And the Buckeye, the line of the Buckeye Pipe Line Company comes in on the other side of the river?

A. Yes, sir.

Q. What becomes of the oil that is gathered at Brice?

A. The oil is delivered by Brice to the South West Pennsylvania Pipe Lines.

143 Q. Where, at what point?

A. At Nedskey Station and Shannopin Station.

Q. Are you quite correct in saying that it is delivered to the Pennsylvania Pipe Lines at Nedskey Station? Isn't it delivered at the state line?

A. Yes, the state line.

Q. The line to Nedskey is indicated on this map by a single black line running approximately northeast, is it not? To the place marked "Nedskey?"

A Yes, sir.

Q. And that is a part of the lines of the South West Pennsylvania Pipe Lines?

A. Yes, sir.

Q. To which you make delivery at the state boundary?

A. Yes, sir.

Q. And the portion of your system which goes to make that connection is indicated by a branch line running there from Brice?

A. Yes, sir.

Q. In order to prevent confusion, where is the line by which you get some oil from the South West Pennsylvania Pipe Lines? Is it this line which runs from Georgetown to Sands Station?

A. Yes, it is the line indicated there running from Georgetown to Sands Station, on the South West Pennsylvania Pipe Lines.

Q. And received by you at the state line of Pennsyl-

144 vania?

A. Yes.

Q. And on to Brice?

A. Yes.

Q. What is the grade of oil which you receive at Brice, if more than one say what?

A. It is all Pennsylvania grade oil.

Q. All that you get from West Virginia and all that you get from

Ohio and what you get from the Buckeye Pipe Line Company and what you get from South West Pennsylvania?
A. Yes, sir.

Mr. Crawford: We offer in evidence the map which the witness has been testifying from and request that it be marked in evidence.

Map received in evidence marked Plaintiff's Exhibit 3 of this date.

At one o'clock the hearing was adjourned until Tuesday, November 18, 1919, at 10:30 o'clock A. M., at the same place, between the same hours.

Last Plaintiff's Exhibit 3—"Third Map."

145 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et als.

New York, November 18, 1919.

Same appearances.

Met pursuant to adjournment at 10:30 a. m.

JOHN J. KENNEY, resumed the stand.

Direct examination.

Continued by Mr. Crawford:

Q. Mr. Kenney, you were interrogated yesterday in regard to the price of Pennsylvania grade crude oil, and I think also the price of Somerset crude, and you testified generally about the comparative prices. As I understood you, you said that at present the price of Pennsylvania grade oil was $4.50 and the price of Somerset oil was $2.85. Are those fixed prices or do they vary from time to time?
A. Those prices vary from time to time.
Q. And during the years when you have been connected with The Eureka Pipe Line Company and The Eureka Pipe Line Company has been operated, have the prices of those different grades of crude been quite different at different times?
A. Yes, sir, they have.
Q. Most of the time a good deal less than they are now, have they not been?
A. Yes, sir, considerably less.

146 Q. It is a fact, is it not, that at the present time owing to whatever causes, that all prices for crude oil are very high as compared with what they were a few years ago?
A. Yes.
Q. What has been the relation between the prices of Pennsylvania grade crude and all the other crudes throughout the period? I mean which has been the more expensive?

A. Pennsylvania crude oil has always been more expensive.

Q. You mean by more expensive that it has always commanded a higher price in the market?

A. Yes, it has always commanded a higher price in the market.

Q. And Somerset, since there has been any, and these other crudes you speak of have always commanded lower prices?

A. Yes.

Q. Is it true that the western oils which have come into your system from the South West Pennsylvania Pipe Lines have a lower market to-day than Pennsylvania grade?

A. Yes, sir.

Q. And has that always been true since they have been produced at the same time?

A. Yes, sir.

Q. So that the relation between these different grades and prices is in a general way the same as it has been heretofore?

147 A. Yes.

Q. They all advance together or they all fall together, is that so?

A. Yes.

Q. In a general way?

A. In a general way, yes sir.

Q. Not limiting you to any particular figures, but generally?

A. Yes sir.

Q. I call your attention again to Plaintiff's Exhibit 3, Third Map, and before going into any further details I ask you whether it would not be possible for you to have arrows placed upon the map which would show the general course of the oils which pass through the different pipes of the system?

A. Yes sir, it would be possible.

Mr. Crawford: If counsel for the state do not object, I will ask the witness to have such arrows placed upon the map and then he can explain them after recess. I think it will conduce to clearness.

Mr. Avis: No objection to that.

Mr. Crawford: I call your attention particularly to the fact that in case of the lines of the South West Pennsylvania Pipe Lines so called, the witness has testified to certain oils as passing from

148 Ewings down to the state line, and thence to Morgantown, and certain oils passing from Littleton across the state line up to Ewings, by that certain black line. There is nothing on the map to indicate which is which, and I can see that it would add very much to the clearness if arrows pointing in the proper direction could be added. It is not my intention to change the map in any way in its essentials, but to add these arrows of direction, which should have been put on before, and then have the witness explain and justify them.

Mr. Avis: That is agreeable.

Mr. Crawford: Will you at recess please see that that is done.

The Witness: Yes sir.

Mr. Avis: I suggest different arrows to show the different oils that pass through the pipes.

The Witness: That can be done very easily.

Q. Looking at the system as a whole from Morgantown west and south and omitting for the present reference to any part of the system which lies north of Eureka, Braden, Downs and Morgantown, what is the general course which oil which you transport pursues by the point of the compass?

A. The oil pursues an easterly and northerly direction.

Q. For example, the Somerset oil which comes to you at
149 the state line at Tug River, that is transported is it in a generally northeasterly direction through your main lines as far as Morgantown?

A. Yes sir, it is.

Q. And the oils which you collect in other parts of West Virginia, to which you have testified, particularly those at and around Sand Fork and on the line from Sand Fork up to Downs, and oil from other fields in West Virginia as to which you have testified, is it true that they move generally speaking in an easterly or a northeasterly direction up toward Morgantown?

A. Yes, generally in an easterly or northeasterly direction.

Q. And the oils which pass Morgantown, I assume, all take northeasterly directions because you have so testified heretofore?

A. Yes sir.

Q. The oils of course which come over the line of the South West Pennsylvania Pipe Lines, and reach Morgantown, necessarily take a southeasterly direction within the State of West Virginia?

A. Yes sir.

Q. To what points in West Virginia during the twelve months ending June 30th, 1919, did your company deliver any oils
150 for local use?

A. We delivered Pennsylvania crude oil to the refinery at Parkersburg, West Virginia; to the Elk Refinery at Falling Rock, West Virginia, and to the Ohio Valley Refining Company at Saint Mary's, West Virginia.

Q. Are those the only places to which during that period you delivered any oils within the State of West Virginia, except that delivered to the Pure Oil Company at a point west of Morgantown, and except that delivered to the West Virginia Pipe Line Company at or near Littleton as you testified yesterday?

A. That is true with a slight exception.

Q. Let us have that exception.

A. We deliver a small amount of oil to the Carnegie Gas Company and the Pittsburg and West Virginia Gas Company.

Q. Where?

A. At Downs, West Virginia.

Q. What do you mean by a small amount?

A. An amount generally of a barrel or two barrels.

Q. In those twelve months that we are talking about, how much did those deliveries amount to in round numbers?

A. I believe a total of thirty-five or forty barrels for the year.

Q. And do you know what the companies use those small
151 amounts of oil for?

A. The oil is their own credit balance, and is probably used by them for lubricating purposes in a small way.

Q. What kind of oil is that, what grade of oil?

A. Pennsylvania grade oil.

Q. Excepting what you delivered to the West Virginia Pipe Line Company and what you delivered to the Pure Oil Company, and except this small amount of oil that you have just spoken of as delivered to these concerns at or near Downs, is it a fact that you have made no deliveries during the twelve months ending June 30th, 1919 within the State of West Virginia except to these three points of the Elk Refinery and the Parkersburg Refinery and the Saint Mary's Refinery?

Mr. Avis: I object to that question as being leading and immaterial.

Mr. Crawford: I think the question may be leading, but in view of what the counsel said yesterday on his own motion, I have not been very careful as to leading the witness because I understood that counsel was anxious to hasten these proceedings. However, I will withdraw the question and will restate it.

Q. Mr. Kenney, you have now enumerated various places at which oil has been delivered or was delivered by your company during the twelve months ending June 30th, 1919. You have
152 mentioned deliveries to the West Virginia Pipe Line Company at or near Littleton; to the Pure Oil Company at a point slightly west of Morgantown, and you have mentioned deliveries made to connecting carriers at several points on the Pennsylvania line, and you have mentioned the small deliveries to the small concerns at Downs. I ask you whether in addition to all those, your company during the twelve months ending June 30th, 1919, made any deliveries except to the three concerns which you have mentioned as the Elk Refinery, the Parkersburg Refinery and the Saint Mary's Refinery?

A. It has not.

Q. This Elk Refinery is noted on the map, Plaintiff's Exhibit 3, Third Map, is it not? Just look at it please?

A. It is.

Q. In what county is it situated?

A. Kanawha County.

Q. Is there any town there? Is it at any particular town?

A. No, there is no town there.

Q. Is it situated on the Elk River?

A. It is.

Q. Some distance northeast of Charleston, is it not?

A. Yes sir.

Q. About how far northeast of Charleston?

A. I should judge about twelve miles northeast of Charles-
153 ton.

Q. What grade of oil did you deliver during the period mentioned to the Elk Refinery?

A. Pennsylvania grade oil.
Q. Anything else?
A. No sir.
Q. From what source was the Pennsylvania grade which you delivered to the Elk Refinery obtained by you?
A. It was the oil produced in and around the old Blue Creek field.
Q. Is that in Kanawha County?
A. Yes sir, it is.
Q. In passing from the Blue Creek field to the Elk Refinery, does that crude get into your main system or did it go through the portions of the auxiliary system to the east of the main line?
A. The portion delivered to the Elk Refining Company goes through an individual pipe laid to that refinery from our Mill Creek Station.
Q. Where is Mill Creek Station?
A. It is about three or four miles above Charleston on the Elk River.
Q. And when you say "above" you mean northeast of Charleston?
A. Northeast of Charleston, yes sir.
154 Q. From Mill Creek there are two parallel red lines running about northwest, joining on to what seems to be the main part of your system running from southwest to northeast. Do you see them?
A. Yes sir, I do.
Q. Does any of the oil which goes to this Elk Refinery pass through that portion of the system?
A. No sir.
Q. Does any of that oil which you deliver to the Elk Refinery get into the main lines which run from Tug River northeast to Elm Run, etcetera?
A. No sir.
Q. Does the oil which is delivered to the Elk Refinery at any point in its course from the field to the refinery come in contact with oil derived from any other source than the neighboring portion of West Virginia?
A. No sir.
Q. Your company receives into its system more or less Pennsylvania grade oil from Ohio, does it not?
A. Yes sir, it does.
Q. How is that oil brought to the state line and delivered to your company?
A. It is delivered by the Buckeye Pipe Line Company at the state line, or the Ohio River to our system of lines.
155 Q. Delivered at one point or at several points?
A. At several points.
Q. Will you please mention the points from north to south at which the Buckeye Pipe Line Company delivers to your company Pennsylvania grade oil, and for that purpose you may examine the map, Plaintiff's Exhibit 3, Third Map.
A. They deliver the oil to our Briscoe Station.
Q. Enumerate them all?

A. Eureka Station, Thistle Station, Brice Station and Moscow Station.

Q. Are those stations all shown on this map by those names?

A. Yes sir.

Q. Briscoe Station, Eureka Station, Thistle Station and Moscow Station, are all on the river, are they not?

A. Yes sir.

Q. Brice is not on the river, is it?

A. No sir.

Q. Are you quite correct in saying that the Buckeye Pipe Line Company delivers oil to you at the Brice Station?

A. They deliver oil to our system at the Ohio River and it is carried by us from there to Brice Station.

Q. Which of those names that you have mentioned are the names of towns or villages, and which are simply names of your

156 stations?

A. Briscoe is a small village I believe. Also Eureka by the same name. Our Thistle Station is located in Sistersville, West Virginia. Brice is located in the country on the Brice Farm, there being no village of that name. Moscow I believe is a small village.

Q. Is there any oil transported through that portion of your lines that extends from Elm Run to Tug River in the reverse direction? That is, you have testified that the general course of the oil is northeasterly through different sections of your system, from the direction of Elm Run, Braden, etcetera. I ask you whether you transport oil through that portion of your system in the reverse direction at all?

A. We do not.

Q. And you did not during the twelve months ending June 30th, 1919?

A. No sir.

Q. Would it have been possible for any of the Pennsylvania grade oil received by your company from the Buckeye Pipe Line Company at any of the points you have mentioned to flow back and mingle with any of the oil delivered to the Elk Refinery?

A. No sir.

Q. And as a matter of fact did it?

A. It did not.

157 Q. Taking up the deliveries that you make with Parkersburg, first tell me what it is at Parkersburg to which you deliver oil?

A. The Standard Oil Company of New Jersey Refinery.

Q. And what grade of oil do you deliver to that refinery?

A. Pennsylvania grade oil.

Q. Only?

A. Only, yes.

Q. I mean at least only during the period we are talking about, the twelve months ending June 30th, 1919?

A. Yes sir.

Q. And as a matter of fact for a good many years before that?

A. Yes sir.

Q. Where does the Pennsylvania crude which you deliver to the

Parkersburg Refinery come from? I speak of course generally. I do not mean to say the exact inch, but in general, from what locality does it come?

A. Part of it comes from the old Blue Creek field in Kanawha County, and some of it comes from Lincoln County and some from Roane County, and some is in the local vicinity of Elm Run Station. It is produced in that vicinity.

Q. All the points that you have mentioned or all the localities that you have mentioned are within the State of West Vir-
158 ginia, are they not?

A. Yes sir, they are.

Q. Are we to understand you to testify that all the oil which your company delivered to the Parkersburg Refinery during the period mentioned was derived from the State of West Virginia?

A. Yes sir.

Q. And that no part of it came from outside of West Virginia?

A. It did not.

Q. How is Parkersburg situated geographically with reference to the points you have mentioned at which you receive Pennsylvania grade crude from the Buckeye Pipe Line Company? Is it north, south, east or west?

A. It is generally northeast except the production at Elm Run, which is northwest.

Q. I think you did not understand my question. I will ask the stenographer to read you the question again.

"Q. How is Parkersburg situated geographically with reference to the points you have mentioned at which you receive Pennsylvania grade crude from the Buckeye Pipe Line Company? Is it north, south, east or west?"

A. It is not.

Q. I ask you, Mr. Kenney, to attend to the question. Please look at the map, Plaintiff's Exhibit 3, Third Map, and
159 tell me if you find Parkersburg on it?

A. I do.

Q. Tell me in what direction Parkersburg is from the Briscoe Station?

A. It is south.

Q. What direction is it from the Eureka Station?

A. It is southwest.

Q. And from the Thistle Station?

A. Southwest.

Q. And from Brice and Moscow Stations?

A. Generally southwest.

Q. Is it correct to say that the five places you have mentioned at which all the Pennsylvania grade crude which your company receives from the State of Ohio is delivered, are north of Parkersburg? That is I mean are they north of a line drawn east and west through Parkersburg?

A. They are.

Q. And south of Parkersburg does your company receive any

Pennsylvania grade crude from any other State? Listen to the question, Mr. Kenney?

A. We do not.

Q. Tell me then how you transport the Pennsylvania crude which you deliver to Parkersburg?

160 A. The oil is delivered through a line from our Elm Run Station indicated on the map as a red line about two inches and a half in length.

Q. How many pipes are there in the line from Elm Run to Parkersburg of which you speak? One or more?

A. There are two pipes in that system, but one is only used in delivering the oil to Parkersburg.

Q. Speaking of the twelve months in question ending June 30th, 1919, do I understand you that the deliveries to the Parkersburg Refinery were made through a single pipe running from Elm Run to Parkersburg?

A. Yes sir.

Q. That is correct, is it?

A. That is correct, yes sir.

Q. And what was the size of that pipe did you say?

A. A four inch pipe.

Q. Were there any deliveries made out of that pipe to anybody else along the length of it?

A. No sir, there was not.

Q. Were there any inlets into that pipe through which oil from other sources flowed?

A. There is one connection but it is not used.

Q. Never mind what is used, although I believe now it is the same. Keep in mind that we are talking about the twelve months

161 ending June 30th, 1919. Was it the fact that during that twelve months any oil from any other source except that which came from Elm Run and from the fields that you have described flowed into that four inch pipe to Parkersburg?

A. There was not.

Q. So it was practically a closed conduit was it between Elm Run and Parkersburg?

A. It was.

Q. And carried only a certain amount of Pennsylvania grade crude obtained from these various fields in West Virginia?

A. It did.

Q. Take up the Saint Mary's Refinery, where is that situated?

A. It is located at Saint Mary's West Virginia, on the Ohio River.

Q. I see a point so described a few miles east of the Eureka Station. Is that the point you refer to?

A. It is.

Q. During the twelve months we are speaking about, what grade of oil did you deliver? I mean of course what did your company deliver to the Saint Mary's Refinery.

A. We delivered Pennsylvania grade oil.

Q. Only?

162 A. Yes, only.

Q. And where was that oil obtained from, if you know?

A. It was obtained in the local territory in the neighborhood of Eureka, and also part of it was received from the Buckeye Pipe Line Company in Ohio.

Q. Received where?

A. Received into our system at Eureka Station.

Q. Does Eureka Station receive any West Virginia oil which is gathered in that neighborhood?

A. Yes sir.

Q. All of that is Pennsylvania grade, is it not?

A. They also receive another oil.

Q. I did not ask you about that. Does the company receive at Eureka more than one kind of crude oil gathered in West Virginia?

A. No sir, it does not.

Q. That one kind is Pennsylvania grade, is it not?

A. Yes, gathered in West Virginia.

Q. Does it receive from the Buckeye Pipe Line Company more than one kind of crude? If so what?

A. It does. We receive Pennsylvania grade crude and also Corning crude oil.

Q. What is the general grade or quality of Corning crude?

A. It is inferior as compared with Pennsylvania grade crude.

163 Q. What is its market price to-day if you know?

A. I am not sure, but I think about $2.70 per barrel.

Q. That compares with $2.50 per barrel for Pennsylvania grade, does it?

A. Yes sir.

Q. Is that received through the same pipes or through different pipes?

A. It is received through different pipes.

Q. How do you transport it from Eureka eastward? I mean do you transport the Pennsylvania grade and the Corning crude through the same pipes or do you have separate pipes for them?

A. We transport the Corning and Pennsylvania grade oils through the same pipes from Eureka to Braden.

Q. If you transport them through the same pipes will you explain how that is done? Give us the details?

A. The pipes generally contain Pennsylvania grade oil. About every two or three weeks we change the column of oil and pump Corning oil for a period of three or four days, when we change the column of oil back to Pennsylvania grade.

Q. Do you put the Corning and the Pennsylvania grade into the same tanks at the same time?

A. No sir, we do not.

Q. Is there any mixture of the two grades in your system beyond what might take place at the head and the rear end of

164 the columns?

A. No sir.

Q. Speaking generally, Mr. Kenney, how is oil transported through a pipe line? What is the physical process?

A. The oil is pumped through pipe lines by the use of pumps, using different pressures for different localities.

Q. What is it that pushes the oil in a pipe?

A. It is the pressure of the pump.

Q. How is oil which is at some distance from your pumping station, say ten miles away, moved along?

A. It is moved along to the station either by pressure from the pump or gravity.

Q. You do not mean to say that the pressure from a pump reaches oil ten miles away from the pump, do you?

A. Well, the pressure is put on the head of the column and transmitted on through to the end of the line on which the pump is connected.

Q. Mr. Kenney, is not this a fact, that you can only push oil with oil?

A. Yes sir.

Q. You could not put a certain quantity of oil into the pipe with nothing behind it and pump it and make it go, could you?

A. No sir.

165 Q. Then is it not necessary that your pipes should be kept continuously full in order to make the oil travel through them?

A. Yes sir, our pipes are continuously full for that purpose.

Q. And you apply the power of your pumps to the oil at or near the pump and that pushes along the oil that is ahead of it, does it not?

A. Yes sir, it does.

Q. And when you spoke of columns some time ago, columns of oil, you referred did you not, to oil in these pipes or in a single pipe extending for a certain distance?

A. Yes sir.

Q. Which might be a certain number of miles or a fraction of a mile?

A. Yes sir.

Q. When you as you said occasionally put Corning oil into the same pipe which you ordinarily use for Pennsylvania grade coming from the Eureka Station eastward, you meant you did not, that at a certain time you stopped delivering Pennsylvania grade oil into that pipe or line and substituted the Corning?

A. Yes sir, I did.

Q. But the Corning oil you are putting in and which fills the pipe at least to the distance over which it extends acts to

166 push along the Pennsylvania grade oil in front of it, does it not?

A. Yes sir, it does.

Q. And so when you stop delivering the Corning crude into the pipe and renew the process of pumping in Pennsylvania grade crude, then this new Pennsylvania grade crude pushes along the Corning does it not?

A. Yes sir.

Q. And the Corning in its turn pushes along the Pennsylvania that is ahead of it?

A. Yes sir.

Q. As a matter of fact, isn't that the only possible way to transport oil, as a physical fact, through a pipe line?

A. Yes.

Q. In other words, you must have oil to push oil with, must you not?

A. Yes.

Q. Isn't that what you meant by the columns of oil?

A. Yes sir, that is what I meant.

Q. In this process of pumping which I have described as pushing one column of oil with one behind it, is there any mixture of the two kinds of oil that takes place where they come in contact?

A. There is a certain contamination.

167 Q. What does that result from? What is the reason for that?

A. It is the overlapping of the head and the last of the two columns.

Q. Might it be illustrated in this way, that if you were to fill your pipe with water and then after a certain length of time pump in ink, that at the point of contact between the ink and the water there would be a certain mixture of ink and water?

A. Yes sir, there would.

Q. What does that amount to in the maximum anywhere in your system, from any point to any other point? What amount of mixture results at the head of a column or at the foot of a column?

A. It amounts to considerable, possibly a thousand barrels or more.

Q. Do you take cognizance of that in your operations? Do you pay any attention to that matter of mixture in your operations?

A. We do.

Q. What do you do about it?

A. We deliver the contaminated oil so made as a mixture to the refineries, or rather to our connecting carriers who make this delivery.

168 Q. Does that mixed oil or contaminated oil command the same price as the best oil, or as the better of the two? Or what is its relation in price?

A. The mixture is figured on the basis of the price of the two oils, and we charge for the full price of each. That is my impression.

Q. Did this oil that you are transporting through the pipe lines, or which you did transport at the time you are speaking of, belong to The Eureka Pipe Line Company?

A. It did not.

Q. The Eureka Pipe Line Company is simply a carrier, is it not?

A. Yes, simply a carrier.

Q. And it was so at all these dates that you speak of?

A. Yes sir.

Q. What do you mean by saying "we charge them?" What do you mean by saying that?

A. We take notice in our deliveries to our connecting carrier of

the full amount of the two oils so mixed and charge them with the full amount of each.

Q. You mean then you are not charging them in dollars and cents but you charge up against them the deliveries?

A. Yes, as a delivery we charge them.

Q. Is it regarded as a good thing to have this mixture of different grades of oil?

Mr. Avis: We object to that question as being incompetent
169 and immaterial.

Q. You may answer.

A. It is not a good thing.

Q. What method if any is adopted to minimize the damage resulting from it?

A. We endeavor to move these different columns of oil in large amounts in order to decrease the net amount of mixture by contamination.

Q. Is there any material difference between the contamination of the result from the contact of two columns of oil of different grades, from the batch of oil which you are moving, the intermediate batch? Is it large or small?

A. There is no perceptible difference in the mixture.

Q. So that if you were moving ten thousand barrels on one occasion and moving one hundred thousand barrels on another occasion, the actual total amount of mixture at the head and rear end of the columns would be the same?

A. They would be essentially the same.

Q. And therefore as a matter of percentages it is very much less in percentage on a large shipment than on a small one, is that correct?

A. Yes.

Q. Are we to understand that this contamination or mixture will take place at each end of the intermediate column?

A. Yes sir, it does.

170 (At this point Robert A. Huddleston, Notary Public, administered the oath required by law to Raymond F. Martin, stenographer.)

Q. That is to say, in the instance you are referring to, of the oil moving from Eureka, if you interposed a column of Corning oil between two shipments of the Pennsylvania grade, there would be the same amount, or substantially the same amount of mixture both at the head of the Corning column and at the rear end of the Corning column?

A. Yes, sir, there would be.

Q. Because the pressure is substantially constant?

A. Yes, sir.

Q. What size of shipment of Corning oil do you commonly make from Eureka under those conditions?

A. We endeavor to pump about 70,000 barrels, which is all the traffic will permit at one continuous pumping of that oil.

Q. And was this true during the twelve months that we have referred to ending June 30, 1919?

A. It was.

Q. So that during that period, when you pumped Corning oil through the pipes ordinarily used for the Pennsylvania grade, you pumped into the line a batch of around 70,000 barrels of Corning, and then followed it up with more Pennsylvania crude?

A. Yes, sir, we did.

171 Q. Now, going back to the St. Mary's Refinery, do you deliver any Corning oil to them?

A. We do not.

Q. Did you ever?

A. No, sir.

Q. You did deliver, however, during this period, Pennsylvania grade oil, part of which came from Ohio, and part of which came from West Virginia fields?

A. Yes, sir, we did.

Q. Was there any of this mixed oil that you have been talking about, that is part Corning and part Pennsylvania, which was included in the deliveries to the St. Mary?

A. No, sir, there was not.

Q. I suppose that in any column of oil such as you have described, that after you have passed the point either at the head or the rear end where the mixture terminates, the intervening body is solely composed of the oil of one grade, is it not?

A. Yes, sir, it is.

Q. And you take proper means to see to it that the oil which gets to the St. Mary's Refinery comes out of that pure product, that pure mass?

A. We do.

172 Q. And you did during the twelve months you were speaking about?

A. We did.

Mr. Avis: Just for information, Mr. Crawford, I understood the witness to say a while back that his company received Pennsylvania and corning crude oil at Eureka for delivery at St. Mary's Refinery. I think the witness said that, I made a note of it, and I was wondering if he got mixed on that.

Q. You heard what counsel for the State has said, he has kindly called our attention to a possible confusion in your testimony or my question. Will you now state whether you intend to testify that your company receives, or ever did receive, Corning oil from the Buckeye Pipe Line Company for delivery to the St. Mary's Refinery?

A. No, sir, we never did receive Corning oil from the Buckeye Pipe Line Company for delivery to the St. Mary's Refinery.

Q. And did you ever deliver any Corning oil to the St. Mary's Refinery?

A. No, sir, we have not.

Q. Nor any of this oil mixed between Corning and Pennsylvania?
A. No, sir.

Mr. Avis: I may have misunderstood him, but I made the note of it, that he receives Corning and Pennsylvania grade at Eureka for delivery to St. Mary's Refinery. I made a note of it,
173 because I think the witness did say it, and I thought he was confused.

Mr. Crawford: I thank you for calling my attention to it. My mind being fixed on the high spots I do not always catch every word, as you can understand yourself.

Q. Will you look at this map, Plaintiff's Exhibit 3, third map, and state what becomes of the Pennsylvania grade oil received at Eureka from the Buckeye Pipe Line, and also from local West Virginia sources, excepting so much as is delivered to the St. Mary's Refinery?
A. It is pumped on through our lines to Braden Station.
Q. And thence?
A. And thence to Morgantown.
Q. And thence?
A. And thence through our system to the Pennsylvania State line, and delivered to our connecting carrier, the Southern Pipe Line Company.
Q. The lines of the Southern Pipe Line Company are in what State?
A. They are in the State of Pennsylvania.
Q. And is it true that all of the Pennsylvania grade oil which I have referred to, received at Eureka, that is including what comes from the Buckeye Pipe Line Company and what is derived from local West Virginia sources, except what goes to the St.
174 Mary's Refinery, is transported across the State of West Virginia into Pennsylvania?
A. All except a portion that is pumped north by Downs Station to the Pennsylvania State line, and delivered to the South West Pennsylvania Pipe Lines at that point.
Q. Well, that goes into Pennsylvania, does it not?
A. Yes, sir.
Q. Now, you have testified that your company receives a certain amount of Pennsylvania grade crude at its so-called Thistle Station situated at Sistersville, West Virginia, and you have testified that some of that passes northeast to Littleton, and some of it I think you said came down through a branch and struck the line from Eureka to Braden at a point near Meadville. Is that correct?
A. Yes, sir, I did.
Q. Now, so much of it as goes in the direction of Littleton, goes in what direction geographicaly, or what point of the compass?
A. It is in a northeasterly direction.
Q. Does any of it flow the other way, through those pipes?
A. No, sir.
Q. There is no reverse direction?
A. No, sir.

Q. There is no reverse current of oil?

175 A. No, sir.

Q. So much of the oil of the Pennsylvania grade received at the Thistle Station as passes down to your Eureka-Braden line, what becomes of that; in what direction is that transported after reaching this Eureka-Braden line?

A. It moves on to Braden Station, thence to Downs, and from Downs some portion of it moves on to Morgantown, and thence to the Pennsylvania State line and is delivered to our connecting carrier, the Southern Pipe Line Company; also a smaller portion of it is pumped by Downs Station through our lines to the Pennsylvania State line, and there delivered to the South West Pennsylvania Pipe Lines.

Q. Is the point at which that delivery is made indicated on the map, and if so, how?

A. It is indicated on the map, close to the point shown as Minor.

Q. Does any of this oil flow backward to the Thistle Station, from the junction near Meadville?

A. No, sir.

Q. Does any of it flow westward from that junction near Meadville, in the direction of Eureka?

A. No, sir.

Q. Could it do so, in the way in which your lines are operated?

A. It could be arranged.

176 Q. But I mean, as your lines from Eureka to Meadville were operated during the twelve months in question, during which I understand you there was an easterly current of oil passing all the time, would it have been possible, operated as the lines then were operated, for any oil coming in near Meadville from the Thistle Station to flow backward in the direction of Eureka?

A. No, sir, not as operated during that time.

Q. And in fact did any flow back?

A. No, sir.

Q. So that no part of the oil which came in at Thistle Station reached the St. Mary's Refinery?

A. No, sir, it did not.

Q. Can you state whether any of the Pennsylvania grade crude received from the Buckeye Pipe Line at a point on the Ohio River near Brice, and also at or near Moscow, reached the St. Mary's Refinery during the twelve months we are speaking of?

A. No, sir, it did not.

Q. You have spoken of Corning oil being received at Eureka. Is there any other point at which Corning oil is received by your company, or was received during the twelve months in question?

A. No, sir, we received Corning oil at no other point than Eureka.

177 Q. At the point on the State line between West Virginia and Pennsylvania where you deliver oil coming from Morgantown to the Southern Pipe Line Company, is there any station?

A. No, sir, there is not.

Q. Is there anything more than a simple junction between the pipes of the two companies?

A. There is nothing more.

Q. And is it a fact that the oil coming up from Morgantown is simply pumped in a continuous stream over that State line?

A. It is.

Q. The pumping force being applied at Morgantown?

A. Yes, sir.

Q. At the point where the pipes of the South West Pennsylvania Pipe Lines meet the line of pipes of your company on the State line, some distance west of a station called Mt. Morris, within the State of Pennsylvania, as shown on this map Plaintiff's Exhibit 3, third map, is there any station?

A. No, sir, there is not.

Q. Is it a fact that the oil which comes down from the north and passes into your pipes at that point simply passes from one pipe to another without any intervening station or tank or break?

A. Yes, sir.

Mr. Avis: Just a minute, Mr. Crawford. I want to object
178 to that question as being improper and leading. I do not mind telling you, it is not technical at all, I do not distinguish between one pipe and another. I have it in my head that it may be the same pipe, with a joint in it.

Mr. Crawford: I want to have this right, Captain Avis, and with your consent I will withdraw the question, if you do not object.

Mr. Avis: I just objected to that point, that is all. You get the idea I have there. I may be absolutely wrong in my assumption.

Mr. Crawford: Then I consent, if counsel for the other side consents, that the last question and answer be stricken out, and I will rephrase my question.

Mr. Avis: All right.

Q. Please look at the map, Plaintiff's Exhibit 3, third map. I call your attention to four parallel lines which are part of a group of parallel lines extending from Ewings in Pennsylvania south to the line between that State and West Virginia. I understand from your previous testimony that the course of the oil that passes through those four pipes is generally southerly?

A. Yes, sir.

Q. I mean to say, it is always southerly. When I say generally, I mean to say that the direction is substantially southerly?

179 A. Yes, sir.

Q. No oil is ever pumped in the reverse direction through those four pipes, is it?

A. No, sir, there is not.

Q. And never was during the twelve months in question?

A. No, sir.

Q. Those four parallel lines represent four pipes, do they not?

A. Yes, sir, they do.

Q. Of a single system?

A. Yes, sir.

Q. That is, they are part of the system of the South West Pennsylvania Pipe Lines, is it not so?

A. Yes, sir.

Q. They come up to what appears to be the line between the two stations, and there the black lines end and four red lines begin. Now, does that indicate the junction between the pipes of the South West Pennsylvania Pipe Lines and those of your company?

A. Yes, sir.

Q. Or it represents one of the junctions, at any rate, does it not? It represents a junction between them?

A. Yes, sir, it represents a junction.

180 Q. Now I understand there is no station at that point on the State line?

A. No, sir, there is not.

Q. There are no pumps there, are there?

A. No, sir.

Q. Well then, what happens to the oil when it comes to the State line, from the north?

A. It flows on from the South West lines directly into the Eureka Pipe Line Company lines.

Q. When you say "lines" you mean pipes, do you not?

A. Yes, pipes.

Q. Well now, just explain what there is at the imaginary line which we call the State line; what is the physical situation in respect to the pipes?

A. It is four joints of pipe, or a continuous line.

Q. Well, do the pipes on one side belonging to the South West Pennsylvania Pipe Lines Company, and the pipes on the other side belonging to your company, so connect as to form practically continuous pipes at that point?

A. Yes, sir they form continuous pipes.

Q. Are there any other fixtures of any kind at that point?

A. There are no other fixtures.

Q. And is what you have just stated also true in substance at the point where pipes from Morgantown, running northeast, con-

181 nect with pipes of the Southern Pipe Line Company?

A. Yes, sir, the conditions are similar.

Q. At the points named on the Pennsylvania State line, do the pipes which belong to your company extend beyond the State line?

A. Yes, sir, in some cases they extend to a certain extent beyond the line, into the other territory.

Q. Now will you please tell us exactly what the fact is; take the junction of the pipes of the South West Pennsylvania Pipe Lines with those of your company which we have been talking about? Please look at the map. We are speaking about four pipes of the South West Pennsylvania Pipe Lines Company, which appear on this map to come down to the State line, indicated by black lines, and four pipes of your company which apparently go up to meet them, and which are indicated by red lines. Now explain what the exact situation is in regard to those pipes?

A. The pipes of the South West Pennsylvania Pipe Lines Company, indicated by the black lines, connect into the pipes of the

Eureka Pipe Line Company, indicated by the red lines, and afford a continuous flow of oil.

Q. Well, where is the connection made exactly?

A. Any connection made would be at the end of the joint of pipe, wherever that might be.

182 Q. How long are the pipes?

A. About 20 feet, approximately.

Q. Then what you are speaking about is an irregularity in the junctions, which arises from the fact that the ends of the pipes do not exactly coincide with the State lines?

A. That is correct.

Q. The utmost amount that any joint could be from the State line would be the length of one pipe, I suppose?

A. Yes, sir.

Q. 20 feet, did you say?

A. 20 to 22 feet.

Q. And that may result in a certain irregularity in the alignment of the joints at that point?

A. Yes, sir.

Q. Do you know in fact whether it does do so at the place we are speaking of?

A. I could not say so positively.

Q. You do not know whether it does or not?

A. I do not.

Mr. Avis: Mr. Crawford, I would like one other question there, if you do not mind. Pardon my interrupting you; I think I am saving time by doing so. You confined those questions just to that particular junction point of those particular lines. I would like it, if you did not mind, to ask if that is true of all these con-

183 necting carriers, so that it covers that whole field.

Q. Do you know whether a similar state of things exists at the point where pipes from Morgantown cross the State line and connect with those of the Southern? I am not asking you whether it might be so, I am asking you whether you know that it is so or is not so?

A. A similar condition does exist where the lines cross into Pennsylvania, connecting with the Southern Pipe Line Company's lines.

Q. Do you know what the exact fact is about these seven pipes? Do you know how the joints are arranged?

A. I do not.

Q. How many pipes are there extending from Morgantown north to the State line?

A. There are seven pipes.

Q. How many different kinds of crude oil pass through those pipes in the course of the year?

A. There are several different grades of oil pass through these lines.

Q. Well now, when I say "pipes" I wish you would say pipes, Mr. Kenney, because it is very confusing to constantly talk about

lines when you mean pipes. The Court is not an expert in pipe lines, and we must make it as clear as possible for the Court.

184 Now, I wish when you use the word "line" you would use it only in connection with a substantial part of the system, and when you mean an individual pipe or pipes say "pipes", please.

The Witness: Pipes.

Q. Are these different grades of crude that are moved from Morgantown moved indifferently through the same pipes, or if not how?

A. They are moved in different columns from time to time.

Q. All through the same pipes?

A. The seven pipes are divided into two systems. The first two pipes are known as No. 1 System; the other five pipes are known as No. 2 System.

Q. Was this the case during the twelve months ending June 30, 1919?

A. Yes, sir, it was.

Q. What kinds of oil were transported through No. 1 System during that period?

A. Pennsylvania grade oil solely.

Q. Do you mean to say that through two pipes out of these seven nothing but Pennsylvania grade oil passed during that time?

A. Yes, sir, I do.

Q. Through the System No. 2, which consists, as I understand you, of the remaining five pipes, how many different kinds of oil were transported; or if you do not remember how many, men-

185 tion what you do remember and then I will ask you about others?

A. We pumped the heavier oils through the No. 2 System, such as Mid-Continent oil, Corning oil, Somerset oil and Cabell oil.

Q. Well, you say "such as" those. Were there any others than those four?

A. I do not think so.

Q. In handling these four kinds of oil out of Morgantown, did you use separate pipes for different kinds, or did you use all the pipes for one kind at one time, and another kind at another, or what was the arrangement?

A. We used all of the pipes for the same grade of oil at the same time, in the different systems.

Q. Now speaking of System No. 2, that is the fact, is it, in regard to that system?

A. Yes, sir, it is.

Q. So that if you had occasion to move and did move Mid-Continent oil during the twelve months we are speaking of, you used the five pipes of the second system all at the times you were moving that kind or grade?

A. Yes, sir, all at that time.

Q. And when you moved, if you did move, Somerset crude you used the five pipes of System No. 2 for Somerset?

A. Yes, sir, we did.

186 Q. And the same way for Corning and Cabell?

A. Yes, sir.

Q. The Mid-Continent oil which you speak of, where does that come from originally, if you know?

A. The Mid-Continent oil is mostly produced in Oklahoma.

Q. Well, it is produced, as its name indicates, in the middle of the country, is it not?

A. Yes, sir, the Mid-Continent field.

Q. Yes; and tell me again how that reaches the system of the Eureka Pipe Line Company?

A. The oil is delivered to the Eureka Pipe Line Company at the Pennsylvania State line, by the South West Pennsylvania Pipe Lines.

Q. Did the South West Pennsylvania Pipe Lines deliver to the Eureka Pipe Line Company during the twelve months we are considering, any other kind of crude oil than Mid-Continent?

A. No, sir, not through those lines.

Q. Through what line did it deliver any other kind of crude?

A. We received a very small amount of Pennsylvania crude oil from the South West at their Mt. Morris and Minor Stations.

Q. This Pennsylvania crude that you speak of, from Mt. Morris, where does that get into your main system or your main pipes? You may look at the map, if it will assist you.

187 A. (Examining map.) It is pumped by Mt. Morris Station through the short black line shown on the map to the West Virginia State line; from that point through a small red line to a point called Doll's Run Station, where it insersects into one of our lines.

Q. Do you mean a line or pipe?

A. One of our pipes, in which we pump Pennsylvania grade oil to Morgantown.

Q. Well, is that pipe you are now speaking of one of those indicated by the four red lines coming into Morgantown from the northwest, or is it something different?

A. That is one of the four red lines indicated on the map as coming into Morgantown.

Q. From that point of junction at Doll's run, is the pipe you are now speaking about used only for Pennsylvania crude, or is it used for that and for some other?

A. It is only used for Pennsylvania grade crude.

Q. In other words, is it the fact that from Doll's Run to Morgantown the Mid-Continent oil, which comes from the South West Pennsylvania Pipe Lines, goes through three pipes into Morgantown?

A. Yes, sir, it goes through three pipes to Morgantown.

Q. Where is Doll's Run Station, what county?

A. It is located in Monongalia County.

188 Q. I notice on the map the name "Doll's Run" is on the right hand of these four red lines, whereas there is a circle on the left hand side. Is that circle the situation of the Doll's Run Station?

A. The Circle represents the true location of Doll's Run Station.

Q. What happens to the Mid-Continent oil when it first arrives at Morgantown?

A. It is put into our tankage, set aside for that oil.

Q. How many tanks have you, in round figures, at Morgantown?
A. About nine or ten tanks.
Q. Well now, do you mean that number altogether, or that number for Mid-Continent crude?
A. That number for Mid-Continent crude.
Q. My question was, how many have you there altogether?
A. About forty-six tanks.
Q. And approximately what is the size of one of those tanks, one or more of them?
A. They vary from thirty to thirty-five thousand barrels per tank.
Q. What happens to the Pennsylvania grade crude when it first reaches Morgantown?
A. It is put into tanks set aside for Pennsylvania grade crude oil.
189 Q. What is the fact about the Somerset crude when it first arrives at Morgantown?
A. There are about eight tanks set aside for Somerset oil at Morgantown, into which that crude oil is put when it reaches that point.
Q. Well, is the same thing or a similar state of things true of Corning oil and Cabell oil, when they get to Morgantown?
A. It is true of Corning oil. The Cabell oil reaches Morgantown in a mixture with the Somerset oil.
Q. I see. So that your tankage at Morgantown is divided, then, into four groups, is it; one group for Pennsylvania grade, one group for Mid-Continent, one group for Corning and one group for Somerset and Cabell. Is that correct?
A. Yes, sir, that is correct.
Q. Taking first the Pennsylvania crude that arrives at Morgantown, confining your answers to the twelve months ending June 30, 1919, how long did the Pennsylvania crude, as a general practice, stay in the tanks after it reached Morgantown?
A. Not over two or three days.
Q. And what happened then?
A. It is——
Q. No, then, what happened then, during that period? I am not talking about to-day. What happened at the end of the two or three days, when you say the oil stayed there in the tanks?
190 A. It was then pumped through our system and delivered to our connecting carriers.
Q. Well, was it delivered through what you have described as System No. 1?
A. It was delivered through System No. 1.
Q. During those twelve months what was the condition of demand for Pennsylvania crude? When I say "demand" I do not ask you about the market, but whether there was any urgency about the shipment of Pennsylvania crude from Morgantown?
A. The demand for Pennsylvania crude during that time was very urgent. We were repeatedly notified of this fact, from time to time.
Q. Did the Pennsylvania crude stay in the tankage there at Morgantown during this period, any longer than was necessary to get it in and get it out into the pipes which were to take it?

Mr. Avis: We object to that question as being improper.

Mr. Crawford: I will withdraw it. I do not wish to burden my record.

Q. What was it which determined the length of time which the Pennsylvania crude remained in the tanks at Morgantown?

A. As a rule, the stock of Pennsylvania grade oil was kept down very low. Once in a while it might accumulate slightly, owing to an increased amount coming in for a day or a few days, but that was immediately reduced within a couple of days.

191 Q. Well, did you move it out of those tanks as fast as your System No. 1 would take it?

A. Yes, sir, we did.

Mr. Avis: I move to strike out that question and answer as being improper.

Q. During this period we are speaking of, the twelve months ending June 30, 1919, for how much of the time were the two pipes in System No. 1 employed for transporting Pennsylvania crude?

A. Almost continuously.

Q. When so employed were they wholly full or partly full or what?

A. We were running full head on that system.

Q. Could you have moved the Pennsylvania crude out of the tanks during that time any more rapidly than you did, in transporting it up to the State line?

A. No, sir, we could not.

Q. Why not?

A. Because of being limited to the capacity of No. 1 System.

Q. As a general fact, when you are pumping oil through pipes are the pipes full or not?

A. They are full.

Q. They have to be, do they not?

A. Yes, sir.

192 Q. What is the pressure that you maintain at the Morgantown Station on oil moving north to the State line?

A. 900 pounds pressure.

Q. 900 pounds to the square inch?

A. To the square inch.

Q. Does that mean per square inch of a transverse section of the column?

A. Yes, sir.

Q. And that was the fact during those twelve months that you are speaking of?

A. Yes, sir.

Mr. Crawford: It is five minutes of one, and I am about to take up a new point. Possibly it might be convenient to adjourn now.

Recess until 2 o'clock P. M.

193 Afternoon Session.

Q. Mr. Kenney, when we adjourned before recess we were talking about the tankage system at Morgantown, and you had described the method as regards the Pennsylvania grade oil which you said was transported all through System No. 1, consisting of two pipes, and you had spoken of the other grades of oil as being transported at different times through System No. 2, consisting of five pipes. Confining yourself to the year ending June 30, 1919, how long did the Mid-Continent oil which came into your system from the South West Pennsylvania Pipe Lines remain in tanks at Morgantown before it was pumped out into the lines connecting with the Southern? I mean as a general practice?

A. Usually not over one or two days. Occasionally for a little longer period of possibly four to six days.

Q. What was true of the Corning oil that was received there, as to how long that remained in tanks before it was pumped from there?

A. The Corning oil was pumped through under about the same conditions as the Mid-Continent. It is true that we had to hold it in order to get the minimum amount, 75,000 barrels, sometimes, for a little longer period.

Q. When you speak of the minimum amount of 75,000 barrels, what do you mean by that?

194 A. I mean by that that the tariffs under which it is handled require that we handle it in batches or amounts of 75,000 barrels or more.

Q. What is the reason for handling in such large batches?

A. The reason is to prevent the percentage of contamination.

Q. That is, you mean to reduce the percentage of contamination?

A. Yes, to reduce the percentage of contamination.

Q. The same way that you testified previously?

A. Yes sir.

Q. Is it a fact then that you have to retain your Corning oil there until you accumulate 75,000 barrels or more?

A. Yes, sir.

Q. What about Somerset oil mixed with or without the Cabell oil, as the case may be? How long does that stay in tankage there at Morgantown?

A. Usually about from four to six days.

Q. You have said that this System No. 2 consisting of five pipes leading out of Morgantown northwest was used for those three kinds of oil, that is, for the Mid-Continent, Corning, Somerset and Cabell mixed?

A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. I understand you to mean then from that that the system is used alternately, for one and then for the other?

195 A. Yes, sir, alternately.

Q. What determines in actual practice the time when you shift from one to the other?

A. The traffic conditions determine when we shall stop one oil in order to relieve the tankage of another oil. It is similar to traffic conditions on the streets, for instance, in the City of New York, when the congestion in one direction is becoming great, the flow or stream is stopped until the cross flow is permitted to move on and reduce itself. That is practi-ally the analogy of the method in which we determine the length of time of pumping the various oils at Morgantown.

Q. Let me see if I understand you. Take the tankage which is set apart for Mid-Continent oil. Do you mean that as soon as those tanks have become full by the inflow from the pipes which come down from the junction with those of the South West Pennsylvania Pipe Lines, that you will then turn the Mid-Continent oil into System No. 2?

A. Yes, sir.

Q. What happens if you do not?

A. Our tankage would become full and we would have to stop the flow of that oil into Morgantown.

Q. And that would mean stopping it for a considerable distance back on the line, would it not?

A. Yes, sir, back to the first station.

Q. And in a general way the same thing is true with these
196 other kinds of oil that go through System No. 2?

A. Yes, sir.

Q. Of the three kinds, Mid-Continent, and Somerset and Cabell mixed, and Corning, which do you receive the most of at Morgantown?

A. Mid-Continent.

Q. And that was true during the twelve months we have spoken about, is that correct?

A. Yes, sir.

Q. And of the other two which was the more?

A. Somerset oil.

Q. And the amount of Corning you receive and did receive at that period was comparatively small, was it not?

A. Comparatively small, yes.

Q. When you turn off the flow of Mid-Continent oil from System No. 2, what do you do with System No. 2?

A. We turn off the flow of Mid-Continent and turn on the flow of Somerset or Somerset and Cabell oils, or the Corning oil.

Q. And that was true during these twelve months we are talking about?

A. Yes, sir.

Q. Was the same thing substantially true at other points from which you ship more then one kind of crude?

A. Yes, sir, the same condition prevailed.

197 Q. That is, you alternated in the use of the pipes and you switched from one kind of crude to the other for the reasons in general that you have described as existing at Morgantown?

A. Yes, sir.

Q. You testified during the morning session in regard to pipes

crossing at the State lines and in regard to the position of the joints of pipes. Some, as I understood you, might fall on one side and some on the other side of the State line. Do you know of your own knowledge what the ownership of the parts of the pipes on either side of the State line is?

A. I don't believe I correctly understood the question this forenoon, but I know that our lines continue right to the State line and no further.

Q. You mean the line of the Eureka Pipe Line Company?

A. Yes, the line of the Eureka Pipe Line Company.

Q. When you were testifying this morning did you mean to do more than testify that the physical joints between the ends of pipe might fall one on one side and one on the other side of the State line?

A. The physical ends of the joints might, but the jurisdiction of the Eureka Pipe Line Company did not extend beyond the exact State line.

Q. What about the jurisdiction, since you used that phrase or ownership of the connecting carriers? For example, the South West Pennsylvania Pipe Lines, where does their ownership end?

198 A. Their ownership ends immediately at the end of the Pennsylvania State line.

Q. Not at the end, you mean at the line?

A. At the line.

Q. Who takes care of the pipes on the West Virginia side of the State line at every place where there is any junction?

A. The Eureka Pipe Line Company.

Q. And who takes care of the pipes on the other side of the line?

A. The South West Pennsylvania Pipe Lines.

Q. Suppose it was the junction of the Southern line?

A. It would then be the Southern Pipe Line Company.

Q. Does the Eureka Pipe Line Company receive Mid-Continent oil through any other line than through the pipes of the South West Pennsylvania Pipe Lines?

A. No, sir, they do not.

Q. And that is all received at the point where the four parallel lines representing as we understand pipes cross the State line just west of Mt. Morris?

A. Yes, sir, all of the Mid Continent oil received by the Eureka Pipe Line Company comes through those lines you mention.

Mr. Crawford: You may cross examine.

199 Cross-examination.

By Mr. Avis:

Q. Mr. Kenney, as I understand you, the title to all of the pipe lines shown on this map situate within the State of West Virginia is in the Eureka Pipe Line Company?

A. Yes, sir.

Q. And the title to that system extends to the West Virginia line?

A. Yes, sir.

Q. There is nothing at the State line or State lines to separate one system of pipes from another system?

A. No, sir, there is not.

Q. And then there is really no point of junction at the State line? It is just simply a point at which title begins and title ends?

A. That is correct.

Q. And then at the State line the pipes which form the system of various companies, connecting companies, the pipe that completes the junction of the lines may extend into both States? I mean the pipe that completes that single system?

A. The pipe is continuous into the other States, but the ownership of the pipe, as testified to, is by the Eureka Pipe Line Company up to the State line only.

Q. In other words, if there is a pipe connecting any one of these systems, a part of the pipe which you say runs about twenty-two feet long, ten feet of it we will say is in West Virginia and
200 twelve feet is in Pennsylvania, the connecting companies jointly own that particular piece of pipe, don't they?

A. The Eureka Pipe Line Company would own all that is in West Virginia, and the connecting company would own the remainder.

Q. Suppose that you wanted to take out that pipe, the Eureka Company wanted to take out that pipe, who would they consult?

A. They would have to take that pipe out, if occasion ever required it, and they would take the portion that is in West Virginia and possibly cut the joint at that point.

Q. That has always been cut, the joint at that point?

A. Well, I don't know that the occasion has arisen to do that, but that no doubt would be done should it arise.

Q. If the entire pipe was defective how would you change it? After consultation with the connecting carries?

A. If it was a single joint it probably would be put in by one company and the expense of the distance of the other company would probably have to be settled for. I don't know of any parallel case of that kind.

Q. When this point of junction was made between the Eureka and its connecting carriers, who did that construction work or made that junction?

A. The lines were laid and a survey of the lines in the first place was taken by engineers showing the distance, of course in
201 West Virginia or Pennsylvania, and a line was laid up to that point and across, and the cost of the line so laid in West Virginia was borne by the Eureka Pipe Line Company.

Q. In other words this work was done by the connecting carriers, and by the connecting carriers I mean yourself as well as the other companies, and then the title of it was fixed and then the cost of it distributed and settled between them, is that it?

A. Yes.

Q. Take, for instance, that line extending down into Kentucky,—and that connects with what company in Kentucky?

A. The Cumberland Pipe Line Company.

Q. Who constructed that pipe line system?
A. The line or portion of it in West Virginia was constructed by the Eureka Pipe Line Company.
Q. That portion of it that extends into Kentucky, the title of which is in the Cumberland Pipe Line Company, who actually constructed that?
A. I don't think so,—you ask who?
Q. Yes.
A. I presume the Cumberland Pipe Line Company. I could not say definitely.
Q. Which was constructed first, your system to the Kentucky line, or the Cumberland Pipe Line system?

A. If I remember correctly the first work was done in
202 West Virginia and the line constructed on south.

Q. Then the Cumberland Pipe Line system was an extension of your system with the title in that company?
A. The Cumberland Pipe Line Company,—yes, in a way, is an extension of the developments from West Virginia.
Q. The Cumberland Pipe Line system standing alone would be valueless, would it not?

Mr. Crawford: I object to that.

Q. I do not mean from a money standpoint, but I mean for the carriage of oil?

Mr. Crawford: I object to that on the ground that this witness is not shown to be qualified to answer that.

Q. If he knows?
A. I do not know.
Q. Do you or do you not know whether there is any outlet for the Kentucky fields which produces the Somerset oil except through the pipe line system of the Eureka?
A. I could not say.
Q. You don't know anything about that?
A. No, sir.
Q. Mr. Kenney, I note that you have a station at Tug River?
A. Yes, sir.
Q. That station is for the purpose of transporting the oil. Does that station simply transport the oil from the point of the
203 station on, or does it also draw from the Cumberland lines?

A. The oil pumped by the Tug River station comes from the Cumberland Pipe Line Company.
Q. Then the Cumberland Pipe Line Company has not a system that forces that oil to the Tug River station?

Mr. Crawford: Do you say "has", or "has not"?

Q. Has not?
A. The Cumberland Pipe Line station pumps the oil to our Tug River station.
Q. It forces the oil there?
A. What?

Q. It forces the oil there to that station?
A. Well, it pumps the oil to the station.
Q. I understood from your testimony a moment ago that that station drained the oil from the Cumberland lines?
A. No, sir, the oil is pumped by the Cumberland Pipe Line Company.
Q. And by its pumps the oil is driven to Tug River?
A. Yes, sir.
Q. And then you use your Tug River station to force that oil through your lines to beyond the Tug River station?
A. Yes, sir.
Q. In other words, the Tug River station has nothing to do with the movement of oil that is produced in the Sttae of Kentucky and that comes from the connecting carrier through the Cumber-
204 land Pipe Line Company?
A. It has nothing to do with the amount of oil reaching that point, but it does pump it north from that point.
Q. Is that true of these other stations along the State lines that you have pointed out?
A. That is true, yes, sir.
Q. Who controls the pumping of that oil to your Tug River station?
A. That is controlled by the Cumberland Pipe Line Company.
Q. Without speaking to you or gaining your consent they can force that oil produced in Kentucky to your Tug River station?
A. They could, yes, sir.
Q. Do they?
A. They do, but of course they have to know that we have sufficient tankage for the oil.
Q. When the oil comes to the Tug River station it is placed in tanks?
A. Yes, sir.
Q. How long does that oil remain there?
A. That oil does not remain over possibly—not over a day.
Q. There is no other oil that goes into that station except this Somerset oil?
205 A. No, sir.
Q. Why couldn't that movement be continuous, Mr. Kenney, of that particular oil?
A. It is continuous to our lines from day to day, except where traffic conditions necessitate that it be stopped for a day or two days, or three or four days, in order to pump some other grade of oil through the line in which the Somerset oil is pumped.
Q. I understood that no other grade of oil went through your Tug River station except Somerset oil?
A. Not through our Tug River station, but the continuous pumping of Tug River station depends upon the continuous movement of that oil all the way through.
Q. Ahead of you?
A. Ahead of it, yes.
Q. At the Pennsylvania,—West Virginia State line there is no

station that pumps the oil from that point from the pipes of the South West Pennsylvania Pipe Lines to the Morgantown station?

A. There is no station at that point.

Q. How does that oil get into Morgantown, by gravity or by the result of pumping?

A. It is the result of pumping by the South West Pennsylvania Pipe Lines.

Q. How far is their pumping station away from Morgantown?

206 A. Ewings Station is about forty-nine and one-half miles to Morgantown.

Q. And the pumping at that station forces that oil on into Morgantown?

A. Yes, sir.

Q. Is there any division of the expense of that pumping?

A. The division of the earnings for the pumping is divided by the State line, that is the lines—the red lines in West Virginia receive the earnings in proportion to the mileage as compared with the dark lines in Pennsylvania.

Q. Then the expense of pumping is not taken into consideration?

Mr. Crawford: If the witness knows.

A. Not that I know of.

Q. Has the South West Pennsylvania Pipe Lines any line that goes east, if you know?

A. You mean any line other than these lines?

Q. Yes.

A. No, sir, they have not.

Q. When were these lines that you have indicated as the lines of the South West Pennsylvania Pipe Lines constructed with reference to the time the red lines of the Eureka were constructed?

207 A. The first line, single pipe, was constructed from what is known as Dolls Run station to Morgantown in 1891, I believe.

Q. By the Eureka?

A. By the Eureka Pipe Line Company.

Q. At that time was there a connecting line that came from Pennsylvania, or connecting pipe?

A. The pipe was later on built from that point into the South West Pennsylvania Pipe Lines.

Mr. Crawford: What do you mean by "that point?"

The Witness: I mean from Dolls Run where the line originally started.

Q. Well, where did the line with which it connected, of the South West Pennsylvania Pipe Lines, end?

A. It was laid to Ewings Station.

Q. Then there was no connection at the time of construction of that single line by the Eureka that you refer to?

A. Not at first, with a first line.

Q. Was Ewings station at that time the terminus of the line or the terminus of the lines of the South West Pennsylvania Pipe Lines?

A. Yes, I judge it was, for the lines in this direction.

Q. You mean south?

A. Yes, to the southward.

Q. On your map you have indicated seven red lines leading from Morgantown to the line of the Southern Pipe Line Company.

208 When were those pipes laid with reference to the time that the pipes with which they connect belonging to the Southern Pipe Line Company were laid?

A. They were laid about the same time.

Q. All seven of those lines I understand were not laid at once? They were laid at different times, or various times?

A. The individual pipes were not laid at the same time.

Q. What is the storage capacity of the pipe line system of the Eureka Pipe Line Company as distinguished from the storage capacity of its tanks?

A. You mean the capacity of the lines?

Q. Yes, sir.

A. I would be unable to answer that question without some reference.

Q. Will you supply that information later?

A. I probably can get it.

Mr. Crawford: I am perfectly willing he should do it if he can. I don't want him to speculate in regard to it, but if there is a source of information which he can consult which will give it, I am perfectly willing that he should do so.

Mr. Avis: I am quite sure that from the size of the pipes and the mileage he can state what the storage capacity is.

Mr. Crawford: There are a great many miles of different sizes of pipes and a great many pipes. I don't want the witness to speculate, but I am perfectly ready to give you all the in-

209 formation we may have on that subject.

Mr. Avis: I understood the witness to say, Mr. Crawford, in one of his answers this morning, that the lines of this company were always filled with oil.

Mr. Crawford: Yes, he did so state.

Mr. Avis: And if they were always filled with oil, it would be important and material to know what the storage capacity of those lines is, from my standpoint.

Mr. Crawford: But not necessarily the tanks as distinguished from the pipes, because they are all part of the system. I don't know, but it may be that the information is obtainable.

Mr. Avis: I would like to call for it, and if it can be produced by any witness later, I can ask for it.

Mr. Crawford: Certainly, if we can get it.

Mr. White: I think what he means is the amount in the tanks alone, because some of those pipes had no oil in them.

Q. Can you tell us the total storage capacity of your system including your tankage?

A. The tankage capacity is approximately one million and a half barrels.

210 Q. When your tanks are full are the lines of your system full of oil also?

A. Yes, sir, the pipes are always full of oil.

Q. What portion of the oils handled by your company during the year about which you have been questioned were of the Pennsylvania grade?

Mr. Crawford: I object to that question as incompetent, because it is too vague. I do not think the witness is necessarily qualified to answer it. I will state that we intend to call a witness of whom the exact figures for this will be given, if that would be of any assistance to counsel.

Mr. Avis: If that is true, I suppose that will be satisfactory.

Mr. Crawford: We shall give you the exact figures of all of these grades of oil, the sources from which they came, and the destinations to which they go and all that, in exact detail, by our accounting department. This witness is not a member of the accounting department, and his knowledge must necessarily be indefinite. At the same time, if you want to press the question after I state that, go on.

Mr. Avis: No. If the witness does not know and you are going to produce another witness, Mr. Crawford, it would be a waste of time to ask him.

211 Mr. Crawford: We shall produce, immediately after this witness, a witness who will go into the utmost detail in regard to that, and give you the exact figures.

Q. Well, the oil of the Pennsylvania grade, whatever State it is produced in, goes through your Morgantown Station, does it not?

A. Not all of the Pennsylvania grade oil in the Eureka Pipe Line Company goes through the Morgantown Station.

Q. What Pennsylvania grade oil does not go through the Morgantown Station?

A. The Pennsylvania grade oil that does not go through the Morgantown station is the oil delivered to three local refineries, the Elk Refinery, Parkersburg, and Ohio Valley Refining Company. Also the small amount of oil delivered from our Downs Station to the Carnegie Gas Company and the Pittsburg & West Virginia Gas Company, and the oil delivered to the West Virginia Pipe Line Company at our Littleton Station, and that delivered to the Pure Oil Company about two miles west of Morgantown; also some Pennsylvania grade oil that is pumped north from our Downs Station to the Pennsylvania State line.

Mr. Crawford: Where? Just mention that, near what point?

The Witness: Near the Minor Station. And also some oil that reaches our Price Station in the northern part of West Vir-

212 ginia.

Q. Mr. Kenney, the oil is delivered to the Pure Oil Company, in whose lines is it delivered?

A. It is delivered by the Eureka Pipe Line Company through its own lines to the tank of the Pure Oil Company.

Q. The Pure Oil Company is not a carrier of oil, is it, except for its own use?

Mr. Crawford: Does this witness know? If this witness knows, of course.

A. I don't know.

Q. Well, you spoke of it, I think, in your testimony as being the connecting carrier. I am not sure of that. If you did make that statement you do not mean to say that it is a carrier of oil?

A. It is only a connecting carrier to the extent we are speaking of, to deliver this oil to them into their tank at Morgantown. It is not a connecting carrier.

Mr. Crawford: I do not suppose the witness understands the technical meaning of the word "carrier" probably.

Q. The delivery is made into tanks instead of into pipe lines or a pipe line system?

A. It is true, when I recall it, we do have a joint tariff with them making them a connecting carrier.

Q. But you are unable to say whether the Pure Oil Company is a carrier of oil in the sense that it carries for anyone that
213 asks, or for the general public?

A. I could not answer that question positively.

Q. You do not know how this oil that is delivered into the tanks of the Pure Oil Company gets out of the State of West Virginia, do you?

A. I understand it is pumped by them across the State line into Pennsylvania in the direction and finally to Marcus Hook, on the Delaware River.

Q. And you cannot tell us how much that oil amounts to a year, can you?

A. The amount that the Eureka Pipe Line Company——

Q. Delivers to the Pure Oil Company?

A. I have not got the figures with me.

Mr. Crawford: We will give you those figures by the next witness.

Mr. Avis: All right, sir.

Q. Can you tell where the oil comes from that you deliver to the Pure Oil Company in the tanks, which you have just mentioned?

A. It is oil produced in West Virginia, and a portion of which is received from the Buckeye Pipe Line Company in Ohio.

Q. Where does oil that is received from the Buckeye Pipe Line Company become mixed with the oil that is produced in West Virginia?

A. We receive the Pennsylvania grade oil from the Buck-
214 eye Pipe Line Company at our Briscoe Station, Eureka Station and Thistle Station, all three of which are located along

the Ohio River. We also receive some oil from that company at Brice and at Moscow.

Q. It becomes intermixed, or as I sometimes see the expression mixed up, with the West Virginia oil at those various points?

A. Yes, sir.

Q. And from then on it is transported by you as a mixture of Ohio and West Virginia oil, is it not?

A. Yes, sir, being the same grade, Pennsylvania grade oil.

Q. But it is this mixture that is delivered to the Pure Oil Company?

A. Yes, sir, part of it.

Q. Now does any of the oil of that same grade that is produced in Pennsylvania, become mixed in the State of West Virginia with the oil that is produced in West Virginia and with the oil that comes, as you have just said, through the lines of the Buckeye Pipe Line Company?

A. I do not believe I understand that question.

Mr. Avis: You might read the question.

(The pending question was read.)

Q. I will add to it, "Which is delivered to the Pure Oil Company?"

215 A. No, sir.

Q. In other words, the Pure Oil Company gets no oil at all through your lines that is produced in the State of Pennsylvania, of what is known as the Pennsylvania grade?

A. No, sir, they do not.

Q. Is it not a fact that all of the oil of that grade that is delivered to your line or system by the Buckeye Pipe Line Company becomes mixed with oil produced in West Virginia, and is transported by you as such mixture out of the State of West Virginia?

Mr. Crawford: You mean oil of the same grade, I suppose?

Mr. Avis: Yes, sir, I mean oil of that same grade.

A. The Pennsylvania grade oil received from the Buckeye Pipe Line Company is generally mixed with a portion of that grade of oil produced in West Virginia.

Q. It loses its identity, does it not, Mr. Kenney?

A. Yes, sir.

Q. There is no way that you can pick out the oil of that grade produced in West Virginia from the oil of that grade that is produced in Ohio?

A. No, sir.

Q. And delivered to you by the Buckeye Company?

A. No, sir.

Q. The oil of that grade that is delivered in your lines

216 from the State of Pennsylvania, does not that also become mixed with the oil that is produced in West Virginia, and in part mixed with the oil that is produced in both West Virginia and Ohio of that grade?

A. It does, to a slight extent. The Eureka Pipe Line Company receives but very little Pennsylvania grade oil from the South West Pennsylvania Pipe Lines. A small amount is received from them, at their Mt. Morris Station.

Q. But it is only through that system that you receive any Pennsylvania grade oil produced in Pennsylvania?

A. Yes, it is only through the system in which we handle Pennsylvania grade oil, and it is pumped to Morgantown with the Pennsylvania grade oil produced in West Virginia, and that portion of it which may come from the Buckeye Pipe Line Company in Ohio.

Q. Now you have spoken of oil that was delivered into the West Virginia Pipe Line Company at Littleton. Where does the oil of the Pennsylvania grade that goes into the line of the West Virginia Pipe Line Company come from?

A. It is produced in and around Sistersville, and there is also some small portion of it produced in the neighborhood of Littleton Station.

Q. Well, does any of the oil of that grade that is delivered to you by the Buckeye Pipe Line Company, go into that, too?

217 A. I should say also some of it is received from the Buckeye Pipe Line Company at our Thistle Station.

Q. Then the oil that is delivered to the West Virginia Pipe Line Company at Littleton is a mixture of oils of that grade produced both in the State of Ohio and the State of West Virginia, is it not?

A. Yes, sir.

Q. And there is no way that you can identify the oil that comes from without the State of West Virginia from that which is produced in the State of West Virginia of the same grade, is there?

A. No, sir.

Q. And when the oil is put in your tanks at Morgantown, it is a mixture of oils produced in West Virginia and in Ohio? I am referring to that same grade now.

A. Yes, sir.

Q. Now you take oil that is produced in the Cabin Creek section of Kanawha County, what is the course of that oil?

A. The oil produced in Cabin Creek, Kanawha County, is owned by the Ohio Cities Gas Company, and refined by them, I believe, in their refinery at Cabin Creek.

Q. Then none of that oil is transported beyond the limits of the State by your company?

A. Our company has transported some of that oil, but not

218 within almost a year.

Q. You are not engaged in the transportation of any oil beyond the limits of West Virginia for the Ohio Cities Gas Company, is that it?

A. No, sir, we are not.

Q. Are you not also transporting oil produced in the Cabin Creek field for individuals and other companies besides the company that you have just referred to?

A. I believe there is a very small amount of oil produced in the Cabin Creek field that comes to our Mill Creek Station.

Q. By the Cabin Creek field, do you mean that section of Kanawha County, West Virginia, that is called Cabin Creek district, embracing what is known as the Kelly Creek oil field also?

A. Yes, sir, what is known as the Cabin Creek field, I believe embraces also the Kelly Creek field.

Q. When that oil reaches your Mill Creek Station is it put in a tank?

A. It is put in a tank containing Pennsylvania grade oil.

Q. Well, all the Pennsylvania grade oil contained in that tank is produced in West Virginia, is it not?

A. Yes, sir.

Q. It makes no difference who you are transporting this
219 oil for, whether for the Ohio Cities Gas Company or for individuals or other companies, the identity of their particular oils, or the oils produced by them, is lost as soon as it gets into that tank, is it not?

A. Yes, sir.

Q. And you are unable to distinguish one person's oil or one corporation's oil from another?

A. Yes, sir.

Q. Assuming that I am a producer of oil, and tender you in the tank on my farm near my well 500 barrels of oil, which is tendered to you in Kanawha County, West Virginia; can you tell whether that oil goes out of the State or not?

A. No, sir, it cannot be definitely stated whether that particular oil goes out of the State or not.

Q. Well, now, I tender you we will say 500 barrels of oil. At the time I have not sold it, nor have I consigned it to any one. What becomes of that oil?

A. The oil, the physical oil, is moved along through our lines.

Q. Some of it may stop at the Elk Refinery, may it not?

A. Possibly, yes.

Q. Some may go on to the Parkersburg Refinery, may it not?

A. Yes, sir.

Q. Some may go to the St. Mary's Refinery?
220 A. No, sir.

Q. It would not go there. Some may finally reach Morgantown?

A. Yes, sir.

Q. But you are unable to tell whether any of it reaches Morgantown or not, is that not true?

A. That is true.

Q. Well if I tender you and you accept from me 500 barrels of oil in the way I have just mentioned, and I consign it to no one for, say, three months, does that oil remain in West Virginia or does it go out of West Virginia?

A. The physical oil possibly has passed out of West Virginia in the general flow of oil.

Q. And if afterwards I would consign that oil to a local refinery, the physical oil that you refer to may have already gone out of the State of West Virginia?

A. Yes, sir.

Q. And the reverse of that proposition is true, if I consign it to someone outside of the State of West Virginia, is it not?

A. Yes, sir.

Q. So there is no way for you to determine, or for the Eureka Pipe Line Company to determine, whether the 500 barrels of oil that I have spoken of goes outside of or within the State of

221 West Virginia, notwithstanding it may be consigned outside of West Virginia or within West Virginia?

A. There is no way to state definitely that that physical oil has not gone out of the State of West Virginia. It moves along through the ordinary channel, and it is impossible, of course, to follow the individual oil itself.

Q. And it is also true that there is no way to tell whether it has stopped in West Virginia?

A. We know that if the oil was produced three months ago, as you stated, that that physical oil has passed out in the regular channel of the oil.

Q. Well, I thought you said, Mr. Kenney, that some of it might have stopped at some of these refineries?

A. Well, some of it would.

Q. Or all of it may have?

A. Any of the refineries tributary to this channel of oil that is moving along at the time.

Q. Well, I say, all of it may have stopped at those refineries, too, may it not?

A. Possibly all.

Mr. White: He said passed out; he did not say it passed out of the State, Captain Avis.

Mr. Avis: I thought he meant that.

Mr. White: He just said it passed out.

222 Q. For what length of time do you hold oil that is delivered to you in the way I have illustrated, that is, from my farm?

A. We do not hold oil for any length of time. The oil is moved along in a general way from day to day.

Q. How long do you wait on a shipper of oil for a consignment of that oil? How long do you wait before you require the shipper to consign it to some person?

A. The time is indefinite.

Q. Well now in the meantime, after thirty days you charge me storage for it, do you not?

A. The Eureka Pipe Line Company has a certain so-called storage charge, which is possibly more of a penalty or demurrage, because of the fact that your oil has not been tendered. A period of about sixty days is allowed before that penalty is effective.

Q. But it is treated on your tariffs as a storage charge, is it not?

A. The word "storage" is used, I believe.

Q. On the theory that it is stored in the State, is it not?

A. Yes, sir.

Mr. Crawford: Allow me to make an objection. I object to the question because this witness is not authorized to explain the tariffs of the company. He is not connected with that part of the
223 business of the company which qualifies him to say what is the reason or the theory on which any part of the tariff is constructed.

Mr. Avis: The question was asked, not on the theory that he was connected with the company in any particular capacity, but on the theory that he might have knowledge and be able to answer the question asked him.

Mr. Crawford: I object that it is not shown that he is in any position to have that kind of knowledge.

Q. I believe you stated that you were an assistant superintendent of the Eureka Pipe Line Company?

A. Yes, sir.

Q. You are unable to give us the amount of oil on which you charged storage within the State of West Virginia in any given year, are you?

A. Yes, sir, I am unable to state that.

Q. You are unable to state that?

A. Yes, sir.

Q. Have you any idea, any approximate idea of what that amounts to?

A. No, sir, I could not say.

Q. Mr. Kenney, I believe you stated that oil moved by gravity as well as by pumping, did you not?

A. The local field oil sometimes is moved by the aid of gravity.

224 Q. I understood you to state that your oil moved generally in a northeasterly direction, and referring particularly to Cabell and Somerset oils, I understod you to convey the idea that none of the Cabell oil would go into the State of Kentucky. I do not know that you used those words, I do not mean to convey the idea, but I got the impression that none of that could go back into the State of Kentucky. Is that true?

A. There is none of that oil that goes back into the State of Kentucky that I am aware of.

Q. Well, you are not aware where any of this oil goes to, as far as its identity is concerned, are you?

A. The general stream of oil I am, yes.

Q. But not of any particular oil?

A. No, sir.

Q. Well, could not Cabell oil, instead of moving northeasterly from Cabell County, West Virginia, go back into the State of Kentucky without your knowledge?

A. It certainly could.

Q. That is possible, isn't it?

A. Yes, but not through our system of lines.

Q. Well, I am referring to your system of lines.

A. It would be impossible for it to move into Kentucky through such a system.

225 Q. Now, is any of the Cabell grade of oil, or a mixture of the Cabell grade of oil and the Somerset oil, sold in the State of West Virginia or used in the State of West Virginia?

A. No, sir, there is not.

Q. None of it gets into any of these refineries in the State of West Virginia?

A. No, sir.

Q. None of it is sold to any of the companies, like the Carnegie Gas Company, that you referred to—not meaning that company, but for a similar purpose?

A. No, sir.

Q. And you cannot give the quantity of the Somerset-Cabell mixture that you handle?

A. The production of Cabell oil is possibly 300 or 400 barrels per month, which is mixed in with the Somerset oil.

Q. But you do not know the quantity of Somerset oil that is handled by you, through your lines?

A. At present we are handling about 14,000 barrels of Somerset oil per day.

Q. At what point geographically do the Somerset and Cabell oils become mixed together, as you have stated heretofore?

A. In that section of our pipes between Tug River and Hamlin.

Q. That is in Lincoln County?

226 A. That is in Lincoln County; Hamlin is in Lincoln County.

Q. You call that Cabell oil?

A. The Cabell oil is produced south of Hamlin. The first Cabell oil was produced right there (indicating on map).

Q. In Cabell County?

A. At Peckett Station, yes, sir.

Q. And that is where it first got its name?

A. Yes, sir.

Q. And then after the production extended into Lincoln County you still called the Lincoln County production Cabell oil?

A. Yes, sir, as it was about the same grade of oil.

Mr. White: Wait a minute. You do not mean to say that all the Lincoln County oil is Cabell oil?

The Witness: No, sir, but that portion of the Cabell oil produced south of Hamlin is in Lincoln County. In other words, most of the Cabell production today is produced south of Hamlin, in Lincoln County. Lincoln County extends down here for several miles (indicating on map), and the Cabell oil is right in here.

Mr. Crawford: There are other kinds of oil than Cabell oil produced in Lincoln County, are there not?

The Witness: Yes, sir. Pennsylvania grade oil is produced in Lincoln County.

227 By Mr. Avis:

Q. Have you any idea about what quantity of Pennsylvania grade oil is produced in Lincoln County during the period that you referred to in your testimony?

A. The production is about 1,600 barrels per day, Pennsylvania grade oil.

Q. After that oil of Pennsylvania grade in Cabell County is delivered to you by the owner of the well, unconsigned, how long do you hold it before you attempt to transport it through your system?

A. The oil is not held in our system. It moves along daily, in the general stream of oil.

Q. Well, that oil finally gets into the main system that handles your Somerset-Cabell oil, does it not?

A. The Lincoln County production of Pennsylvania oil has to go through the same system used by Somerset oil, between Hamlin and Elm Run Station.

Q. The movement of that oil of that grade, Pennsylvania grade, is continuous, I understand you to say?

A. No, the movement of the Somerset oil is continuous, and the Pennsylvania grade oil is moved when traffic conditions necessitate its movement. The movement is continuous to our Hamlin Station, and there it has to stand until the traffic conditions permit the shutting off of Somerset oil and the turning on of this Pennsylvania grade oil to go through the line. When the Pennsylvania grade oil is pumped out the Somerset oil is then turned on behind it.

228

Q. Now, how long do you hold that oil?

Mr. Crawford: Which oil?

Mr. Avis: Of the Pennsylvania grade I am talking about, that is produced in Lincoln County.

Mr. Crawford: Hold it where?

Mr. Avis: In response to the last question he said he held it until traffic conditions got right. Now I am asking him.

A. It requires about two weeks before traffic conditions will permit us to pump the Pennsylvania grade oil out of Hamlin.

Q. By that you mean you hold it there until you get a sufficient quantity to justify you in stopping the shipment of your Somerset oil, do you not?

A. Yes, sir, we get a sufficient quantity of Pennsylvania grade stock in order to lessen the percentage of contamination by moving that oil through the lines that the Somerset oil is moved through.

Q. Then that is retained there as a matter of convenience, is it not, at Hamlin?

A. It is retained there as a matter of necessity. Conditions will not permit the handling of that oil daily, because the lines are taken up by pumping the Somerset oil through.

229

Q. Well, that movement of the Somerset oil continues through your system that leads from Tug River beyond the point where this Pennsylvania grade oil, produced in Lincoln County, is put into this system?

A. The movement of Somerset oil is continuous from the point shown as Hamlin north, except during the time that we are pumping the Pennsylvania grade oil.

Q. Now, that oil moves continuously, whether you have 75,000 barrels of it or not, does it not?

Mr. Crawford: What do you mean by "that oil?"
Mr. Avis: The Somerset oil, I am speaking of.

A. The Somerset oil moves continuously in one steady stream of the same grade of oil.
Q. Yes, irrespective of the number of barrels that you desire to move?
A. I will say that it is a continuous stream, except during the time that we are having this Pennsylvania grade oil from Lincoln County.
Q. In other words, you do not wait until you have 75,000 barrels of that to put it through your lines?
A. The Somerset oil?
Q. Yes?
A. No, sir. We endeavor if possible to keep our Somerset tankage pumped down.
230 Q. Daily?
A. Daily.
Q. And when you do stop the movement of Somerset oil at Hamlin it is for the purpose of giving your Pennsylvania grade oil, produced in Lincoln County, an outlet?
A. It is for that purpose solely.
Q. Have you tankage at Hamlin?
A. Yes, sir.
Q. Do you put this Somerset oil in that tankage always on its journey?
A. We have individual tanks set aside for the Somerset oil.
Q. And individual tanks set aside for the——
A. The Pennsylvania oil.
Q. The Pennsylvania grade oil?
A. Yes, sir.
Q. At Hamlin?
A. Yes, sir.
Q. You could stop the movement of Somerset oil at Hamlin, could you not, and give the other oil the right of way?
A. We are compelled to do that about every two weeks, to stop the movement of Somerset oil and start the movement of the Pennsylvania grade oil.
Q. That is, when that Pennsylvania grade oil amounts to about 75,000 barrels?
231 A. Yes, sir, although we are not confined to that 75,000 barrels in this instance, as it is altogether a local matter.
Q. Please explain what you mean by that, Mr. Kenney?
A. By that I mean the oil is not carried on a tender of shipment, it may not be carried on a tender of shipment.
Q. You only wait for an accumulation of 75,000 barrels of oil when there is a tender of shipment?
A. We are required to wait on that amount on our oil shipped out of the State.

Q. Well, is there any place that you wait for 75,000 barrels on a tender of shipment, except at your Morgantown station?

A. No, sir, there are no other points that we pump oil over the State line in which the grade of the oil in the line is changed. That is, it remains all Pennsylvania grade oil.

Q. I do not believe I understand that answer, Mr. Kenney, as being responsive to my question. (Last question read.)

A. The minimum 75,000 barrels is necessary in delivering the oil across the State line, or to the State line.

Q. You mean, from Morgantown?

A. Yes.

Q. That is your only station where that rule applies?

A. It applies at other points, but that is the only point that the oil in the line is ever changed to some other oil.

Adjourned to Wednesday, November 19, 1919, at 10.30 a. m.

Last Plaintiff's Exhibit—3.

232 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et als.

New York, November 19, 1919.

Met pursuant to adjournment.

Same appearances as before.

JOHN J. KENNEY resumed the stand.

Cross-examination.

Continued by Mr. Avis:

Q. Just before we adjourned yesterday afternoon, Mr. Kenney, I asked you this question:

"Q. Well, is there any place to wait for 75,000 barrels on a tender of shipment, except at your Morgantown station?"

To which you replied as follows:

"A. No sir, there are no other points that we pump oil over the State line in which the grade of the oil in the line is changed. That is, it remains all Pennsylvania grade oil."

I then stated:

"Q. I do not believe I understand your answer."

And then you answered:

"A. The minimum 75,000 barrels is necessary in delivering the oil across the State line, or to the State line."

I do not understand the answer quite clearly yet, the neces-
233 sity.

A. The tariffs under which The Eureka Pipe Line Company transports its oil state a minimum amount on each separate tariff that has to be accumulated before the oil is pumped into another state.

Q. It makes no difference where or from whence you accumulate that oil so long as you get that quantity of that grade of oil?

A. That quantity of that grade of oil, yes.

Q. As I understand the only place on your line that it is necessary for you to accumulate 75,000 barrels of oil is at your Morgantown Station?

A. That is correct.

Q. I asked you this question in connection with your reply that Morgantown was the only place:

"Q. That is your only station where that rule applies?" And you answered as follows:

"A. It applies at other points, but that is the only point that the oil in the line is ever changed to some other oil."

A. The lines leading into the South West Pennsylvania lines always contain the same grade of oil, speaking of Pennsylvania oil.

We never change the grade of the oil and it is one continuous
234 flow of Pennsylvania grade oil. I should have said the lines leading to the state lines connecting with the South West Pennsylvania Pipe Lines.

Q. Do you mean by that that these lines only handle the Pennsylvania grade oil?

A. Yes sir.

Q. They never handle any of these inferior oils you have spoken of?

A. No sir, not the lines in which we handle the Pennsylvania grade oil.

Q. Do you deliver any oils to the Cumberland Pipe Line Company or to the Buckeye Pipe Line Company for transportation in in another direction, in a westerly direction?

A. There is a very small production of Somerset oil in Wayne County that is delivered to the Cumberland Pipe Line, and they in turn deliver that oil back to us at our Tug River Station.

Q. You mean it goes out of Wayne County, West Virginia, into Kentucky and then back into the State of West Virginia?

A. Yes sir, the production is in an isolated section and the line is closer to certain lines in Kentucky and for that reason the oil is run down to a point I believe called Bussyville, and from there it is delivered into the main current of Somerset oil that comes to our Tug River from the Cumberland Pipe Line Company.

235 Q. As I understand your answer there is a production of Somerset oil in Wayne County that goes into the lines of

the Cumberland Pipe Line Company and there mixes with the oil produced in Kentucky, does it not?

A. That is correct.

Q. Then that mixture comes on past your Tug River Station into West Virginia where there is a new mixture formed with the Cabell oil, is that not true?

A. Yes sir.

Q. In handling the Somerset oil from Tug River how many stoppages,—I mean from your Tug River Station, how many stoppages on that oil from there?

A. The oil is pumped by Tug River to Hamlin, by Hamlin to Poca, by Poca to Flat Fork, by Flat Fork to Elm Run, by Elm Run to Braden, by Braden to Downs, and Downs to Morgantown.

Q. Is it placed in tanks at each one of those places?

A. Yes sir.

Q. And how long does it remain in tanks at each one of those stations on the average?

A. The average is not over possibly twelve hours.

Q. And then at Morgantown I think you said it remains there a period of what length of time?

A. Possibly four to six days.

236 Q. Is it not a fact that you frequently hold in your tanks at Morgantown more than 75,000 barrels at a time?

A. Only where the traffic necessities are such that we cannot start the delivery when the amount has reached about 75,000 barrels.

Q. Under the traffic regulations that you refer to, you could move the oil at any time it reached the quantity of 75,000 barrels, could you not?

Mr. Crawford: I object to that question in regard to tariffs, because they are instruments in writing, and the tariffs themselves are the best evidence. We intend to offer all these tariffs, and the tariffs are here in court and are at the disposition of counsel if he wishes to consult them. I object to questions as to the contents of those instruments being asked this witness as not the best evidence and otherwise objectionable.

Mr. Avis: The question is not a question calling for the contents of tariffs, but is a question based on the answers made in his direct examination as to why a certain quantity of oil was held in the pipe line at a certain place for a certain length of time.

Mr. Crawford: I think the question calls for the contents of the tariffs and I press my objection.

A. We could, provided the traffic regulations would permit us to do so.

237 Q. What traffic regulations do you refer to that might or might not permit you to do so?

A. The traffic in some particular oil with which our tankage is partly filled would require that that oil should be moved along. The movement of that oil continues until the necessary relief is had, when that oil then is shut off and the Somerset oil is turned on.

Q. You do not refer to any traffic regulation that is established by any public authority or law, do you?

A. No, it is the traffic between the oils that I refer to.

Q. In other words it is a regulation of your own, that is of your own company, is it not?

A. It is a regulation that we have to meet.

Q. Go back to Lincoln County and the Pennsylvania grade oil that is produced there. How long does it take for it to reach Morgantown if it reaches Morgantown, and how many stoppages of that oil is there before it reaches Morgantown?

A. The Lincoln County oil is necessarily held at Hamlin Station owing to traffic conditions for a period that varies from ten days to two weeks. The pipes in which this oil is pumped north from Hamlin are used daily for pumping Somerset oil. When we have twenty to twenty-five thousand barrels of Pennsylvania grade oil produced, in Lincoln County oil, the stream of Somerset oil is shut off and the Lincoln County oil is turned on, and we pump
238 it north from Hamlin Station. The first station it touches is Elm Run, to which it arrives in about thirty-six hours. From Elm Run it is pumped north to Braden, to Downs, to Morgantown, and would reach Morgantown possibly in a day and a half or two days more.

Mr. Crawford: You understood you were talking about Pennsylvania grade?

The Witness: Yes.

Mr. Avis: It is incorporated in the question.

Q. How long does that oil remain at each one of these places in tanks?

A. Not over ten or twelve hours.

Q. Your Ohio oil, the Corning grade, how long does it take that to reach Morgantown and how many stoppages are there?

A. The Corning oil received at our Eureka Station from the Buckeye Pipe Line Company, owing to traffic conditions, remains at Eureka for a period of possibly twelve to fourteen days. The pipes from Eureka to Braden usually contain Pennsylvania grade oil. In the course of twelve to fourteen days we shut off on the Pennsylvania grade oil and turn on the Corning oil at Eureka. It is there pumped to Braden and put in a tank, and from Braden it is put into the lines, the pipes in which we pump Somerset oil from Braden to Downs to Morgantown. It reaches Morgantown from the time it leaves Eureka in about two days and a
239 half.

Q. The retention at Eureka is for the purpose of accumulating the quantity of that oil, is it not?

A. It is for the purpose of accumulating a quantity of that oil in order to reduce the percentage of loss by contamination if it was pumped more frequently.

Q. That is, to acquire a quantity for that purpose?

A. Yes sir.

Q. Your Pennsylvania grade oil that comes from Ohio you are unable to trace the course of, are you not? That is the physical oil?
A. We cannot trace the physical oil, although we know the general course of it.

Mr. Crawford: You mean of course Pennsylvania grade?
Mr. Avis: Yes, that was the question.

Q. The Mid Continent oil that you refer to is all received from the South West Pennsylvania Pipe Lines?
A. It is all received from the South West Pennsylvania Pipe Lines at the state line.
Q. And then goes into tanks at Morgantown, as I understand it?
A. Yes sir.
Q. And is held there about how long usually?
A. Four to six days possibly.
240 Q. What quantity of that do you receive per day as an average?
A. The quantity per day varies, it is about twenty to twenty-two thousand barrels daily.
Q. You handle that in pipes through which you handle no other oil, do you not, on its journey to Morgantown?
A. No other oil is handled in those lines, those pipes.
Q. It is put in the tanks at Morgantown and stored there in the way you state and when it leaves Morgantown it leaves through pipes through which you handle no other oil, does it not?

Mr. Crawford: I object to the question, to the use of the word "stored." The witness has not stated that the oil was stored there and this is an improper gloss upon his testimony. Oil that is put in tanks is not stored. I object to the question and will not allow the witness to answer the question unless you correct it.
Mr. Avis: I will stand on the question, if you will not allow him to answer it. Does the witness decline to answer the question?
Mr. Crawford: I will withdraw the statement about not allowing the witness to answer the question.

241 (Question read, "It is put in the tanks at Morgantown and stored there in the way you state, and when it leaves Morgantown, it leaves through pipes in which you handle no other oil, does it not?")

A. The oil is received at Morgantown and put in tanks and temporarily stopped there, owing to traffic conditions, until we have an opportunity to pump it east in the pipes of the Number 2 System, in which other oils are also pumped.
Q. What other oils are pumped through your Number 2 system, besides the Mid-Continent oil?
A. Somerset and Cabell oil, and Corning.
Q. Does the Corning oil become at any time mixed with the Somerset and Cabell oil?
A. No sir, except in the contamination that might take place between the two oils, when being pumped separately through the pipes.

Q. Do you receive Mid-Continent oil every day at Morgantown?

A. Yes sir, practically every day, barring accident, in which event the lines may be shut down for a short period.

Q. What is the average quantity you receive in your lines for deposit in tanks at Morgantown, per day?

A. We receive a daily average at the state line, going to Morgantown, of twenty to twenty-two thousand barrels.

242 Q. And that is deposited in tanks, as you stated, at Morgantown?

A. It is temporarily put in tanks at Morgantown.

Q. You have already stated the time it remains in those tanks, I believe. Now, what is the average quantity of Somerset and Cabell oil mixture that you receive each day at Morgantown?

A. The daily average receipts of Somerset and Cabell oils vary, but are about twelve to fourteen thousand barrels a day.

Q. Now, what are your average receipts of Corning oil at Morgantown per day?

A. The average daily receipts of Corning oil are about twenty-two hundred barrels per day.

Q. Then you handle much more of the Mid-Continent oil per day than you do of either the Somerset-Cabell mixture or Corning oil at Morgantown, is that not true?

A. We handle more Mid-Continent oil than the other two oils, yes sir.

Q. Which do you give preference in the shipment through this system that you are speaking of, from Morgantown on?

A. We give no preference. The oils are moved along in regular turn, as traffic conditions may permit us to do so.

Q. Well, you keep some oil in that system all the time, do you not: keep it full of oil?

243 A. The pipes are always full of oil.

Q. Do you not give any preference to those grades of oil, as to remaining in the pipes between Morgantown and the Pennsylvania line, in that particular system that you refer to?

A. No sir, the pipes always remain full of oil, and subject to the conditions that I have just mentioned, the oils are moved along at different times as our traffic conditions will permit.

Q. In some of your answers yesterday you explained that in moving Somerset oil from the Tug River Station on, that oil moved continuously, and that you gave it the right of way until you accumulated a sufficient quantity of the Pennsylvania grade in Lincoln County to justify the movement of that oil. Now in that instance you give preference to the Somerset oil, do you not?

A. The daily amount of Somerset oil handled being so much greater than the daily production of Pennsylvania grade oil, the pipes are used steadily to move the Somerset oil north, and the Somerset oil is stopped at times to permit the movement of the Pennsylvania grade oil through those pipes.

Q. Is it not true as to your Mid-Continent in its movement from Morgantown on north, that the quantity is much greater and that you give it preference?

A. To that extent we have to use our pipes for a greater period for handling Mid-Continent oil than we do for the other
244 two oils.

Q. Well, do you not as a matter of fact give your Mid-Continent oil preference because of the quantity of it, and as a matter of convenience stop the movement of that oil in order to move your Corning or Somerset-Cabell mixture? I am speaking now from Morgantown on, in that same system that we refer to?

A. We give it no preference. The amount that we receive being larger, it requires a greater length of time necessarily for the use of the pipes to handle Mid-Continent oil than for handling the other two.

Q. As I understand you, all of the Mid-Continent oil that is handled by you or by your company comes from the South West Pennsylvania Pipe Lines, and is handled by you solely through Monongalia County, West Virginia, is it not?

A. All the Mid-Continent oil received by The Eureka Pipe Line Company is handled through Monongalia County.

Q. Solely?

A. Solely.

Q. Is any of that oil delivered to the Pure Oil Company?

A. Yes sir, some of that oil is delivered to the Pure Oil Company.

Q. Do you know how much?

A. The amount varies. I could not state it without having the figures, but it may amount to several hundred thousand bar-
245 rels per year.

Q. Do you deliver any of the Somerset-Cabell mixture to the Pure Oil Company at that point?

A. We deliver no Somerset-Cabell mixture to the Pure Oil Pipe Line Company.

Q. Did you last year?

A. No sir, we did not.

Q. Do you deliver to that company any Corning oil?

A. No sir, we do not.

Q. I believe you have already stated you do deliver to it the Pennsylvania grade oil?

A. Yes sir, we do deliver Pennsylvania grade oil to that company.

Q. Now all of these deliveries are made within the State of West Virginia, are they not, to the Pure Oil Company?

A. Yes sir, to the Pure Oil Company, within the State of West Virginia.

Q. As a matter of fact, all of your deliveries of oil are within the State of West Virginia, are they not?

A. Our deliveries of oil of other——

Q. Won't you answer that, and then explain?

A. The delivery of most of our oil is made at the State line.

Q. Well, what quantity of it is not made within the State
246 of West Virginia, if there is any?

Mr. Crawford: I object to that question. The witness has just said that most of it is not delivered within the State of West Virginia.

Mr. Avis: I know that, Mr. Crawford; that is the reason for this question.

Mr. Crawford: Well, I object to the form of the question as misconstruing the witness' testimony.

Mr. Avis: Will you read my preceding question and his answer, please, and then my next last question, I want to be sure I am correct.

(The record was read.)

I do not see that there is any objection to that question, Mr. Crawford.

Mr. Crawford: The objection stands.

Mr. Avis: All right, please answer.

A. By far the greater amount of our deliveries are made at the State line going into the State of Pennsylvania.

Q. But as a matter of fact, the physical deliveries that you refer to in your last answer are made within the State of West Virginia, are they not?

A. They are made within the termination of the State line of West Virginia.

Q. You have no title to pipe lines and make no deliveries
247 beyond the line of the State of West Virginia, do you?

A. No sir, we do not.

Q. Now, you used the expression "by far the greater amount" of your deliveries were within the State of West Virginia——

Mr. Crawford: No, he did not say that.

Mr. Avis: What was the answer to that question?

(Answer read, "by far the greater amount of our deliveries are made at the State line going into the State of Pennsylvania.")

Q. You used that expression "by far the greater amount of your deliveries were at the State line." I want to ask you, do you make any deliveries beyond the confines of the State of West Virginia?

A. We do not.

Q. Your other deliveries, your deliveries that are not made at the State line as you have detailed, are those deliveries within the State of West Virginia that you have already referred to?

A. Yes sir.

Q. In one of your replies yesterday you stated that your tanks at Morgantown were kept pumped down for the year ending June 30th, 1919. Was that not due to abnormal conditions?

A. I do not know that it was. As a matter of fact, for
248 the past several years, our tankage has been kept down quite low.

Q. Is that due to a shortage of production?

A. Well, it is possibly due to the shortage of production, as well as for the increased demand of the product.

Q. Well, when you spoke of your tanks being pumped down during the year ending June 30th, 1919, were you referring more par-

ticularly to Pennsylvania grade oil, Mr. Kenney, or the other grades, or all grades that you handle?

A. It is generally true of all grades of oil reaching Morgantown.

Q. As to movement of oil beyond Morgantown, was that not to some extent regulated by demand?

A. I cannot state so definitely. We receive those oils on tenders of shipment, and move them along on that authority.

Q. Suppose you had accumulated—for illustration, this is—we will say three hundred thousand barrels of your Mid-Continent oil in the tanks at Morgantown, would you move all of that three hundred thousand barrels at one time?

A. No, we probably would not be able to do that. It would depend absolutely on what the traffic conditions would permit.

Q. The traffic condition you refer to is the movement of the other oils, is it not?

A. The necessity of properly handling the other oils, yes sir.

249 Q. Well, the necessity you refer to and emphasize of handling other oils or any particular oil, is brought about by what?

A. By the amount of such oil we may receive at Morgantown daily.

Q. Well, suppose you had your three hundred thousand barrels of Mid-Continent oil in the tanks, and had in your tanks at Morgantown also eighty-five thousand barrels of your Somerset-Cabell mixture, and you had started the movement of the Mid-Continent oil, what would prevent your moving the entire three hundred thousand barrels of Mid-Continent oil before you started the movement of your eighty-five thousand barrels of Somerset oil?

A. The movement of the complete amount of Mid-Continent oil might take place, if we could properly take care of the other oil coming in daily.

Q. Well, what tankage have you for depositing or storing of your Somerset-Cabell mixture?

A. We have set aside at Morgantown for checking purposes, for Somerset oil, eight or ten tanks.

Q. Of what capacity?

A. They would average about thirty thousand barrels each.

Q. How long would it take you to move through your system that is devoted to the movement of your Mid-Continent oil,

250 three hundred thousand barrels of oil?

A. About seven days in the Summer time, possibly eight days in colder weather.

Q. Do you include in that storage time, or that the capacity of your lines will only handle three hundred thousand barrels in that time?

Mr. Crawford: I object to the use of the word "storage" as improperly representing the witness' testimony. He has not testified to any storage, and if, as counsel has stated, it is a question for the court, then I insist that the use of the word calls for a conclusion of law and is incompetent on that account.

Mr. Avis: I would like to ask the witness what word he would use.

Q. The oil is taken to Morgantown, is it not, Mr. Kenney, the Mid-Continent oil?

A. What is the question?

Q. I say the Mid-Continent oil is taken to Morgantown, is it not?

A. The Mid-Continent oil that we receive is taken to Morgantown.

Q. And it is placed in tanks, is it not?

A. It is placed in tanks at Morgantown.

Q. And it remains in tanks an average of how long at a
251 time?

A. It stands in the tanks for the necessary period that will permit us to move the oil when the traffic conditions permit.

Q. Well, it is stored in those tanks for the time being, is it not?

A. It stands in those tanks.

Q. Yes. And it remains in the tanks, does it not?

A. Yes sir.

Q. Until it is moved?

A. Yes sir.

Q. And the necessary traffic conditions you refer to are a question of moving other oil, are they not?

A. Of moving all the other oils.

Q. And you say that the question of demand for any given grade of oil has nothing to do whatever with the movement of oil by you from your Morgantown Station?

A. It has not, other than the traffic conditions that I speak of. We are guided solely by the priority of the tender covering the oil.

Q. In a previous answer you said that it would take you about seven days to move three hundred thousand barrels of Mid-Continent Oil. Now I ask you, did you include in that time the storage
252 time in tanks, as you have explained what you mean by "storage?"

Mr. Crawford: I make the same objection as heretofore to the use of the word "storage," as not properly representing the witness' testimony, and as containing a conclusion of law, and therefore incompetent.

Mr. Davis: The witness may answer.

A. It would take the seven days to do the physical pumping of that oil.

Q. In other words, the capacity of your lines that handle that particular oil from Morgantown on north is less than fifty thousand barrels a day?

A. It is.

Q. And the time that it takes to pump the oil is in addition to the time that the oil remains in the tanks, as you have explained, at Morgantown?

A. It is.

Q. Who directs the movement of that oil, or of any grade of oil, from Morgantown north?

A. The oil from Morgantown is pumped east.
Q. Well, I speak of it as north.
A. Or northeast?
Q. Well, northeast we will say; I just speak of it generally as north.
A. I direct the pumping of the oil from Morgantown Station.
253 Q. What guides you in the pumping of that oil?
A. The tender of shipment covering the oil.
Q. When do you receive the tender of shipment with respect to the time that you move the particular oil?

Mr. Crawford: I object to further questions about tenders of shipment, because tenders are written documents, and the witness' testimony is not the best evidence.

Q. If you are handling Somerset-Cabell oil, who makes the tender of that oil?
A. The tender of shipment is made from, I presume, the general office, the manner of which I do not know, and we are sent, or furnished rather, with a copy of such tender when we are the initial or a connecting carrier with reference thereto.
Q. What I am trying to find, if you know, Mr. Kenney, is, is a tender made by the carrier that delivers the oil to you, or is it made by the individual or corporation or person to whom the oil belongs?
A. I cannot state just the way in which those tenders are issued or made out.
Q. Is it not frequently that you accumulate Mid-Continent oil at Morgantown before any tender is made?
A. No sir, it is not.
Q. In other words, no oils get into your lines, of any grade, until there is a tender by someone to your company?

254 Mr. Crawford: He has not said that.
Mr. Avis: Well, I am asking him that. The previous question would indicate that, that he received no oil without a tender.

A. Not when the oil comes from without the State.
Q. Do I understand by that answer that any oil that is delivered into your lines which comes from beyond the State of West Virginia, at the time of its receipt by you from the connecting carrier you have on hand a tender for that particular oil?
A. Yes sir.
Q. Or for that quantity of oil?
A. Yes sir, that is correct.
Q. I believe you stated in your examination in chief yesterday, that some of the Corning oil was used at the refinery at Saint Mary's?
A. No sir, I did not.
Q. You made some reference to it having been used there, I am quite sure.

Mr. White: I think he testified just the contrary, Captain. (Mr. White called Mr. Avis' attention to the testimony at the bottom of page 82 and top of page 83 of the typewritten record.)

Q. Is any of your Corning oil used in the State of West
255 Virginia at all, Mr. Kenney?

A. No sir, it is not.

Q. In handling any grade of oil in your pipe line system it is impossible for you to know the point of production of that oil, is it not? I am referring to the line from Morgantown on.

A. The point of some of the local oil production is known. The point of production of oil coming from some other State is not known, except to the extent that it comes from the State indicated by the tariff.

Q. But when it is placed in the tanks at Morgantown, which is the place from which you ship all of the oil you deliver to other carriers to go outside of the State, at that point all of the oil of a particular grade, wherever it originates or wherever it is shipped from or wherever it is produced is mixed together, is it not?

A. All of the oil of any particular grade is put into tanks that are set aside for that particular grade of oil.

Q. And I believe you did state it, but I will ask you again, whether it is Pennsylvania grade from West Virginia or Ohio or Pennsylvania, after it becomes intermixed or mixed together it loses its identity except as to the grade of the oil, does it not?

A. It is a mixture of the oils from West Virginia and Ohio,
256 consisting of Pennsylvania grade oil.

Q. And some Pennsylvania, I believe?

A. And some Pennsylvania.

Q. Yes. Now that is true of your other grades of oil; you are unable to determine, for instance, Mid-Continent oil, from what State it is shipped or in which State it is produced?

A. The tariffs show from what state it comes, and where it is produced.

Q. If seventy-five thousand barrels of Mid-Continent oil is tendered for transportation in the State of Oklahoma, and seventy-five thousand barrels is tendered for shipment in each of the other four or five states that are mentioned in the bill of complaint, you are unable to determine which particular seventy-five thousand barrels that you handle comes from Oklahoma and which particular seventy-five thousand barrels comes from any other state, are you?

A. If the oil is produced in any other state we would be unable to state whether there was any mixture of the two oils of that grade.

Q. Well, if Mid-Continent oil is produced in five states and is tendered to you for transportation, it is all intermixed before it reaches you, is it not?

A. If the oil comes from five states, as you say, it would be impossible for us to know the individual portions coming from
257 each state.

Q. Because when you receive it under those circumstances, you would receive it as a mixture from those several states?

A. We would receive it as a Mid-Continent grade of oil. That is what you are speaking about now.

Q. Yes. Now you stated in your testimony in chief, that the oil became contaminated by reason of the movement thereof; and I believe you stated that the contamination would average about a thousand barrels at the top of the column and about the same amount at the rear of the column. Now how much of that oil would become contaminated in your lines in the course of twelve months?

A. That would depend on the number of columns that were handled during that time.

Q. Is any record kept of the number of columns of oil handled during any period of twelve months?

A. We keep a record of the different columns of oil going through our lines.

Q. Will you furnish that, as a part of your testimony, a statement of that quantity of oil contaminated?

Mr. White: You mean the number of columns?

Mr. Avis: Yes, and the quantity of oil, if his records will show it.

Mr. Crawford: If the record shows the amount of con-
258 tamination. Make your request as definite as you can, Captain Avis; I do not think that is definite enough.

Mr. Avis: Well, what I am trying to get at is nothing more nor less than the quantity of oil that is contaminated. I do not care anything about the number of columns in the movement of oil. If the records are obtainable, to show the quantity of oil contaminated during the period ending June 30th, 1919.

Mr. Crawford: You mean contaminated while the oil is in the pipes or in the system of The Eureka Pipe Line Company?

Mr. Avis: Yes, meaning the same oil that he has spoken of in his testimony in chief as having become contaminated.

Q. Have you any records to show the quantity of oil that is contaminated by the movement of oils in the way you spoke of in your examination in chief?

A. No sir, we have no record of that kind.

Q. You have a record showing the columns of oil moved by your company, have you not?

A. We have such a record, showing the movement of different columns of oil through our lines.

Q. Now, if I have the number of columns of oil moved in your lines, and multiply it by two thousand barrels, which you
259 give as the approximate amount of the contamination, would that not give the quantity of oil that is contaminated in the way you state?

A. If the approximated estimate of a thousand barrels for each end of the column is correct, then it would.

Mr. Crawford: You are counting your contamination double, Captain Avis, because each thousand barrels counts each way. It counts on the column ahead and counts on the column behind.

Assuming that the one thousand barrel item is correct, it is only one thousand barrels for each column, not two thousand, because these columns flow along one after the other. At every junction, let us say, there is a thousand barrels; but you cannot count at both ends on each column, that is doubling it.

Mr. Avis: Well, I will ask Mr. Kenney; I may be wrong in that.

Q. As I understand you, Mr. Kenney, there is only a contamination of one thousand barrels for each column?

A. That, I judge, would be fair approximation, although I have no absolute way of definitely knowing that fact.

Q. In moving, we will say, seventy-five thousand barrels of oil of the Somerset grade from Tug River to Morgantown, and ahead of that seventy-five thousand barrels of Somerset grade that started at the Tug River Station there was Pennsylvania grade oil
260 in the pipe lines, can you give us any idea of the amount of contamination between Tug River and Morgantown?

A. There is no Pennsylvania grade oil at Tug River

Q. I understand that; I understood that came in at Hamlin?

A. Yes sir.

Mr. Crawford: Will you not add to your question, "assuming that the Pennsylvania grade came in at Hamlin," so as to make it clear?

Mr. Avis: I did not say where it came in; I said assuming that it was in the line ahead of this Somerset. I think my question was clear on that. Read the question to the witness again.

(The pending question was read.)

Q. Going back to my question, on that assumption will you give us some idea of the amount of contamination?

A. The only points that we use the same lines for Somerset oil and Pennsylvania grade oil is between Hamlin and Elm Run.

Q. I do not think that answers my question, because my question is based on an assumption. What I am trying to get at, Mr. Kenney, is in moving Somerset oil from Tug River to Morgantown, what is the amount of contamination, in barrels, or the quantity of contamination in barrels?

A. It would be impossible to state definitely, but I presume it would be a thousand or fifteen hundred barrels.

261 Q. To each column?

A. No, for the two columns.

Q. For the two columns. In moving Somerset oil from Tug River to Morgantown is it broken up into more than one column?

A. No sir, with the exception that when we move Pennsylvania grade oil from Hamlin to Elm Run, about every twelve or fourteen days, the column of Somerset oil between Hamlin and Elm Run is stopped during the period that the Pennsylvania grade oil is going through the pipes from Hamlin to Elm Run.

Q. Now, when you get at Elm Run don't you have to move the Somerset oil in another column?

A. The Somerset oil is then pumped through lines that are regularly used for that oil, to Morgantown, with the only exception that when we pump Corning oil from Eureka to Braden the Corning oil goes through the lines in which we handle Somerset oil from Braden to Morgantown, and the column of Somerset oil between Braden and Morgantown is stopped during that time.

Q. Well, your Somerset oil first goes to Elm Run, as I understand it, and then from Elm Run to Braden?

A. There are several, there are four stations south of Elm Run. The Somerset oil, as I stated before, first comes to us at Tug River. It then is pumped by Tug River to Hamlin, by Hamlin to Poca, by Poca to Flat Fork, and Flat Fork to Elm Run.

262 Q. But in that journey from Tug River to Elm Run, there is no other oil permitted to come in the lines at any time?

A. At no time, except during the short period in which we are pumping the Pennsylvania grade oil from Hamlin to Elm Run.

Q. Well, maybe you can help me out, Mr. Kenney; perhaps I do not get my questions clear and they are not intelligible. But what I am trying to ascertain is this, the number of columns of oil that you handle, and what you mean by a column? Do you mean that by handling, for instance, a column of Somerset oil from Tug River to Elm Run, there is only one column of it, even though there are those different stations through which it passes?

A. Yes sir, just one column.

Q. That is what I am trying to get at. Now then, take from Elm Run to Braden, is there another column there?

A. That is the same column.

Q. The same column?

A. Yes sir.

Q. There is no other oil permitted to come in between Elm Run and Braden, with which your Somerset oil mixes at that point?

A. No sir.

Q. At Braden it may or may not be necessary to hold that Somerset oil to clear the pipes of your Corning oil?

263 A. Yes sir, we stop the Somerset oil for the period necessary to pump the Corning oil through the same pipes from Braden Station to Morgantown.

Q. Then there would be a contamination at that point there, would there not?

A. There would be, between the Corning, Somerset and Cabell oils.

Q. Now then, after you had moved your Somerset oil through Hamlin Station, and decided to more the Pennsylvania grade oil that was produced in Lincoln County at the rear end of that column of Somerset oil, whatever part of the Pennsylvania grade oil is put in the lines there would be another contamination, would there not?

A. The contamination mentioned is between the two oils, the junction of the columns of the two different oils.

264 Q. Then in the movement of Somerset oil you would have, or probably would have a contamination of the Pennsylvania grade and the Somerset oils at Hamlin, would you not?

A. Not at Hamlin Station.

Q. Whereabouts would that contamination take place?

A. It would be starting with the pumping by Hamlin Station.

Q. Well, that is what I mean. Now, then, there would be another contamination at Braden with the Corning oil, would there not?

A. Yes, sir, there would be, at the time when you stopped the column of Somerset oil in order to move the Corning oil through this same line of pipes.

Q. Then if I get from you the records of the number of columns of oil of any grade that is handled, and multiply that number by a thousand, I would have approximately the quantity of oil that is contaminated?

A. The figure of one thousand was a very rough approximation. As I stated just a short time ago, I had no absolute way of arriving at the amount of contamination caused by the different columns of oil:

Q. But that is your best estimate of the amount, is it not?

A. It would depend upon the number of pipes and the distance, and for that reason it varies greatly.

Q. Well, this combination or contamination, by the time it
265 reached Morgantown might, and probably would be a contamination of at least three grades of oil, would it not, or at least four grades of oil, namely, the Pennsylvania grade, Somerset-Cabell grade and Corning grade?

A. There would be a small contamination of the four grades.

Q. What do you do with that oil that is a contamination of those various grades?

A. The oil is separated into the tanks, according to the proper manner in which we determine the time the oil should reach Morgantown, which is computed from the distance and size of pipes, and that portion of the oil is delivered as a mixture.

Q. In what tanks do you put that contaminated oil, and at what place?

A. It is set aside in a tank that is for use of the greater amount of oil that is in the particular column.

Q. Where are those tanks located in which you first place your contaminated oil?

A. They are located at Morgantown Station.

Q. In other words, all of the contaminated oil is deposited in tanks at Morgantown Station?

A. Yes sir.

Q. None at any of the other stations?

A. All of the contaminated oil that reaches Morgantown
266 is deposited in tanks located at Morgantown.

Q. Then some of the contaminated oil does not reach Morgantown?

A. It all reaches Morgantown.

Q. Do you not keep a record of the quantity that is put in tanks at Morgantown?

A. The total amount of oil reaching Morgantown? Yes.

Q. Contaminated oil?

A. We do not.

Q. After you put that in tanks as contaminated oil, what disposition do you make of it?

A. The oil is delivered to our connecting carrier under the name of the grade that was being moved when the contamination took place. We make a report including the mixture, and we have no such amount as purely a mixture. The mixture is charged at whatever the various amounts is covering the oils that are mixed.

Q. What do you mean by "charged at"?

A. Well, our connecting carrier is notified daily of the amount of oil that we deliver them through our pipes.

Q. And if you reach the conclusion that the greater part of that mixture is Pennsylvania grade oil, then you deliver it to the connecting carrier as Pennsylvania grade oil?

A. Yes, sir, we do.

Q. Is there any adjustment of prices made between the
267 connecting carriers on account of that contamination?

A. No, not as far as I know.

Q. You used the expression in your testimony in chief yesterday that you charged the full price of such oil as constitutes a mixture, and you made some explanation of your answer that was not altogether clear to me. What do you mean by charging full price?

A. Why, I meant the daily report which I just now spoke of. We notify our connecting carrier daily the amount of oil we delivered to them the preceding day, and that is what I mean by the word "charged".

Q. And you did not refer to money at all, when you spoke of the price?

A. No, sir.

Q. Just the quantity of oil?

A. Yes, sir.

Q. Did you ever deliver any of that mixture to the Pure Oil Company?

A. No, sir.

Q. I will now ask you to supply, as part of your testimony, at some later day when obtainable, a statement of the number of columns of oil handled by your company.

Mr. White: For what time, Captain, covering what period?

Mr. Avis: Why, for the period of the year. For the period ending June 30, 1919, I would prefer, if you have such records.
268 All on earth I am trying to get at is the quantity of oil that is contaminated, that is all.

Mr. White: I just want to specify the period. I do not know what he has or can furnish.

Q. This contamination that you refer to, Mr. Kenney, may be a contamination of the oil produced in and used entirely within the State of West Virginia, may it not?

A. No, the contaminated oil has mostly reached Morgantown.

Q. I understand, but the mixture may be composed of oils that are consigned from the point of production in the State of West Virginia to some point in West Virginia where it is used, may it not; for instance, at the Parkersburg refinery or the St. Mary's refinery?

A. There is very little likelihood of any of the contamination reaching Parkersburg or St. Mary's, and none such for the Elk Refining Company.

Q. I believe you stated yesterday that there was no way for you to determine, when you received five hundred barrels of oil from me, in the illustration I gave, whether it went out of the State or remained in the State, so far as the physical oil is concerned. Now, if that be true, and the Somerset oil comes in contact we will say, with the Pennsylvania grade of oil that was consigned for use within the State, there would be a mixture of the Somerset oil with the oil that was produced and used entirely in the State of West Virginia, would there not?

269 A. The Somerset oil does not come into contact with the oil delivered to any of the three refineries within the State.

Q. But that does not answer my question, Mr. Kenney. If you will read the question back to me, perhaps I did not make myself clear.

(The pending question was read.)

Mr. Crawford: I now object to the question as being a hypothetical question which is not based upon the testimony of the witness and is therefore incompetent. There is no authority that I know of for asking hypothetical questions, except those based upon the evidence.

Mr. Avis: I think that is based upon the evidence, Mr. Crawford.

Mr. Crawford: I take my objection.

A. We cannot follow the physical oil, referring to the five hundred barrels that you speak of, but by virtue of the fact that we move more oil to Morgantown than we deliver within the State, we know in a general way that a great portion of the five hundred barrels you speak of goes to Morgantown.

Q. Yes. When you speak of Pennsylvania grade oil handled by your company between points and within the State of West Virginia, you cannot identify any particular physical oil as having come from the State of Ohio, the State of Pennsylvania or the State of West Virginia, nor any particular oil that was consigned

270 to points without the State, nor any particular oil of that grade that was consigned to points within the State, can you?

A. We cannot distinguish between the physical oil, Pennsylvania oil, coming from Ohio or Pennsylvania, mixing in with the same grade of oil produced in West Virginia; but we can tell approximately if any of this mixture is delivered within the State of West Virginia.

Q. Well, you do deliver a quantity of that mixture within the State of West Virginia, do you not, of that grade of oil, Pennsylvania grade?

A. We deliver that mixture, yes, at a few points.

Q. Yes. Now, all that you know about the physical oil is that so much is produced in the State of West Virginia, and that so much comes into your lines that is produced from other States, and that more goes out of the State than comes into your lines through

other States and through the State of West Virginia; is that not true?

A. Yes, sir.

Q. In so far as the physical oil is concerned?

A. Yes, sir.

Q. And that is true of any mixture of any of the other grades of oils, is it not?

Mr. Crawford: Of which mixture are you asking?

Mr. Avis: Any mixture.

Mr. Crawford: Are you asking about the contamination
271 mixture?

Mr. Avis: Yes, sir.

Mr. Crawford: Or the mixture from two different sources?

Mr. Avis: No, the contaminated mixture.

Mr. Crawford: I do not think the witness understands what you have been talking about.

Mr. Avis: All right, sir.

Mr. Crawford: Your previous question indicated to me that you were talking about a mixture of the same grade of oil from different sources.

Mr. Avis: I will change it, and make it contaminated mixture, Mr. Crawford.

(The record was read.)

Mr. Crawford: Read the question again, because it uses the word "mixture" in an entirely different sense from what has preceded it, and yet the question is connected up with the preceding questions as if it were used in the same sense.

Mr. Avis: In explanation of the question I will say that I have departed entirely from the Pennsylvania grade of oil, and am asking him about mixtures of other grades of oil not referring to the Pennsylvania grade of oil. I do not know how to ask the question differently, to get the response I am seeking.

Q. (Pending question read.) "And it is true of any mixture of any of the other grades of oils, is it not?"

A. If you do not mean contamination, that is mixture by
272 contamination, it is true. However, we have no other parallel mixture of other oils except the small or slight mixture between Somerset and Cabell oil.

Q. And you have two mixtures of Somerset oil that is a mixture of Somerset oil that is produced in Wayne County, West Virginia, that goes down into Kentucky, gets into the pipe lines of the Cumberland Pipe Line Company and there mixes with Somerset oil that is produced in Kentucky, and comes on back into the State of West Virginia and then again mixes with the Cabell oil produced in West Virginia, does it not?

A. Yes, sir.

Q. This Somerset oil that is produced in West Virginia, that you send into Kentucky and then back through the lines of the Cum-

berland Pipe Line Company into West Virginia, is handled in that way as a matter of convenience to your company, is it not?

A. It is handled in that manner, because the source or location of the production of that small amount of oil is some distance away from the lines in which we handle Somerset oil.

Q. But your purpose is to get that oil that is produced in West Virginia, the Somerset grade, back into your lines in West Virginia, is it not?

A. Yes, sir.

Q. On its northeasterly direction?

A. Yes, sir.

273 Q. Now, is there any Cabell oil used in West Virginia, at any place?

A. No, sir.

Q. Nor none of the Cabell-Somerset mixture?

A. No, sir.

Q. And none of the Corning oil?

A. No, sir.

Q. I believe those were all the grades of oil that you spoke of in your testimony in chief, were they not; the Somerset, Corning, Pennsylvania, and Cabell?

A. And Mid-Continent.

Q. And Mid-Continent. Is there any contamination in the handling of Mid-Continent oil through your pipe lines before it reaches Morgantown?

A. There is not in the Eureka Pipe Line Company.

Q. If there is any such it is before it reaches the Eureka Pipe Line Company?

A. It would be.

Q. The tanks in which you deposit the Mid-Continent oil in handling it, at Morgantown, are used solely for the purpose of depositing or storing the Mid-Continent oil?

A. Yes, sir, the tanks in which we hold the Mid-Continent oil at Morgantown are used solely for that purpose.

Q. And at no time during the course of the year are used

274 to store any other oil or grade of oil?

Mr. Crawford: I object to the use of the word "store," for reasons already stated on the record.

A. No, sir.

Q. And that is true of Corning oil?

A. Yes, sir.

Q. And of your Somerset-Cabell mixture?

A. Yes, sir.

Q. And of your Pennsylvania grade?

A. Yes, sir.

Q. In other words you have tanks that are set apart for the depositing or storing of each grade of oil?

A. Of each grade of oil, tankage for each grade of oil, yes, sir.

Mr. Avis: I think that is all I want to ask Mr. Kenney, except the number of columns.

Mr. White: He is to get that if he can.

Mr. Avis: Well, he says his office has a record of it, and we call for it; and if you could it might be clear if the calculation could be made. It would save the calculation, the number of columns multiplied by a thousand.

Mr. Crawford: I do not know what the records will show, Captain Avis. I doubt very much if the records are in any such condition that such a computation can be made; but whatever the records have we will give you. We will not agree to make a computation
275 which amounts to an admission. We reserve the right to make objections to your use, to any use which you may make of data which we furnish, which we think is improper. You are at liberty to have anything that our records show; we have nothing to conceal, but we cannot undertake to make up a table for your benefit which may involve an admission, in assistance of your case. That you cannot expect us to do.

Mr. Avis: No, I do not expect you to do that, but I do expect you to produce anything that your records show——

Mr. Crawford: Anything our books show and our records show, that we can.

Mr. Avis: And if your records do show the quantity of this contaminated mixture that the witness refers to, that is handled by your company each year, I call for that, or ask for a statement, whether those records do show such contamination or the quantity of such contaminated mixture.

I also call for the number of columns of oil handled, that the witness says their records do show, and which the witness estimates would be a thousand barrels for each column. That is correct, I understand——

Mr. Crawford: No, the witness has qualified the statement.

Mr. Avis: I understand that.

Mr. Crawford: He has not so estimated it, taking the testimony altogether.

Mr. Avis: Is that not a matter of argument between us,
276 Mr. Crawford? If we are going to put it on the record, I know that the witness yesterday stated to you again and again, several times,—I am not questioning the good faith of the witness, that is the furthest thing from me—but you yourself brought out this contamination, that it was at the head of the column or the top of the column a thousand barrels, and at the rear of the column a thousand barrels. The witness gave that as his judgment. That is all I want, if that is his best judgment, if the records do not show anything else.

Redirect examination.

By Mr. Crawford:

Q. Mr. Kenney, in regard to this matter of the oil received at Morgantown being there placed in tanks and kept for a certain length of time, as you have testified, you have a number of times been interrogated by the counsel for the State, in which questions he has used

the word "storage" in that connection. In any of the answers that you made, if you have used the word "storage" or if you have used a sentence with the word "storage" in it, what do you mean by it?

A. If I have used the word "storage" I mean by that that the oil was temporarily stopped and held there for a short period, until traffic conditions permitted us to move it on.

Q. Did your company receive from any one any compensation for holding the oil in those tanks at any time?

A. Not that I know of, no, sir.

277 Q. The holding of the oil in those tanks, under the circumstances to which you have testified, is not done for the convenience of any shippers, is it? It is done to suit the exigencies of your business is it not?

A. No, sir, it is not done for the convenience of any shipper; it is done for the exigencies of our business.

Q. On your cross examination you spoke about pipes of your company extending to pipes of the South West Pennsylvania Pipe Lines. I do not recall the exact language, but in substance your answer indicated a flow of oil from your pipes into the pipes of the South West Pennsylvania Pipe Lines, or so I understood it. Did I understand that correctly?

A. In delivering oil to the South West Pennsylvania Pipe Lines at the State line, the pipes used for that purpose contain no other oil than Pennsylvania grade oil. That was what I was trying to state at the time.

Q. Now, what I want to bring out is, what the pipes are to which you refer as those into which you deliver oil from your system. Will you please indicate on the map, Plaintiff's Exhibit 3, third map, what pipes they are about which you are speaking?

A. I mean the pipes from Downs Station to the Pennsylvania State line at a point close to Minor Station, indicated by a red line on this map about an inch and three-quarters in length; and

278 also by the short red line from Littleton Station to the Pennsylvania State line, where it connects with our connecting carrier the South West Pennsylvania Pipe Lines; also the short red line about a quarter of an inch in length, showing the pipe from our Brice Station to the Pennsylvania State line, where it connects with our connecting carrier, the South West Pennsylvania pipe lines.

Q. You were asked yesterday this question (page 132): "What Pennsylvania grade oil does not go through the Morgantown station?" And you enumerated various points to which the Pennsylvania grade oil was delivered without coming to Morgantown. You did not mention, if I read your answer aright, any delivery made from the Littleton Station or from the pipe running out of the Littleton Station, to this pipe from the neighborhood of Littleton to Ewings belonging to the South West Pennsylvania Pipe Lines. Did you mean to omit that from the enumeration?

A. I do not recall that we have made a delivery to that line within the last year and a half.

Q. Well, if you did do so, then such oil as you delivered there, of course, did not go through the Morgantown station?

A. No, it would not go through the Morgantown station.

Q. Your duties do not include any part in the making of tariffs, do they?

A. No, sir.

279 Q. And you have not, as a matter of fact, had anything to do with the settlement or making of the tariffs or terms of the tariffs that have been in force since—well, say within the last eighteen months?

A. No, sir, I have not.

Q. You said that some part of your local lines, by which I understand you to mean lines within the State of West Virginia, gathering lines within the State of West Virginia, I suppose, are operated by gravity. Did I understand you correctly?

A. That is the gathering lines.

Q. Just explain how gravity operates?

A. The local oil, if run from a tank located on a height, would run to a point, by gravity, which was lower in elevation.

Q. As to those lines which were being operated by gravity, would they always be full?

A. No, sir.

Q. Under what circumstances would they not be full?

A. If the drainage was very great the lines would practically empty themselves.

Q. Under the force of gravity?

A. Yes, sir, under the force of gravity.

Q. At various times in your testimony you have spoken about deliveries being made at stations on the Ohio River. You mean, I suppose, that those deliveries were made at the pipes that run from those stations to the State line on the other side of the Ohio River?

280 A. The deliveries were made to us in our lines at the low water mark on the Ohio side of the river.

Q. And thence carried into your stations?

A. And thence carried through our own lines into our stations.

Q. You were asked yesterday this question, and you answered it as follows:

"Q. Then the Cumberland Pipe Line system was an extension of your system, with the title in your company?"

referring to the Cumberland Pipe Line Company. Your answer was:

"A. The Cumberland Pipe Line Company,—yes, in a way is an extension of the developments from West Virginia."

What did you mean by the word "extension" as you used it there? Or what did you mean by that answer?

A. I do not know the exact conditions that prevailed in starting the work on the Cumberland Pipe Line Company. It is or has been customary, when a pipe line company located in one State and oil was found in an adjoining State, to extend the lines over to that

State and handle the oil, but that is handled separate from the oil handled by the company in the State in which it is incorporated.

Q. What do you mean by extending your lines over to that
281 State?

A. Well, that is not done now, but what I referred to when I made this last statement was, for instance, years ago when the South West Pennsylvania Pipe Lines were operating in Pennsylvania, the production of oil that took place in West Virginia was taken care of as an extension by the South West Pennsylvania Pipe Lines, until the incorporation of the Eureka Pipe Line Company later on.

Q. That was prior, then, to 1891, when the Eureka was incorporated?

A. Absolutely, yes, and no such condition would prevail to-day.

Q. I ask you again, you have not answered that question, what you meant when you said, "The Cumberland Pipe Line Company,—yes, in a way, is an extension of the developments from West Virginia"?

A. By that I meant——

Q. I do not ask you for any custom now; I want you to answer that question. What did you mean by that answer?

A. The Cumberland Pipe Line Company is a separate and distinct corporation, and is no extension whatever from the Eureka Pipe Line Company. When I used the word "extension" I meant the extension of the oil production.

Q. Mr. Kenney, you were asked a question which I think counsel did not himself quite mean, but at any rate, which amounted
282 to this, and you assented to the question; that the amount of oil of the Pennsylvania grade which was moved out of the State of West Virginia was larger than the amount of that received from other States and that which was derived from the State of West Virginia.

Mr. Avis: I did not mean that.

Mr. Crawford: I am sure you did not.

Mr. Avis: I do not think I asked that question in that way; possibly I did.

Q. I am sure counsel did not mean to be so understood; but in order to clear the question up I will ask whether you meant to so testify; that is, did you mean to testify that the total amount of Pennsylvania grade which you delivered out of the State of West Virginia was greater than the sum of the Pennsylvania grade received from other States, plus that produced in the State of West Virginia?

A. No, sir, I did not.

Q. If you did so testify that was a mistake, was it?

A. It certainly was.

Q. You said yesterday that a small amount of Pennsylvania grade oil was received from the State of Pennsylvania at or near the Mt. Morris station. About how much is received from there, if any, or how much was received during the twelve months ending June 30, 1919?

283 A. The approximate daily average would be about four or five hundred barrels, I think.

Q. Will you please look at Plaintiff's Exhibit 3, third map, and state whether there is any Pennsylvania grade oil produced in the State of West Virginia north of a line drawn east and west through Elm Run?

A. Yes, sir.

Q. Well, will you indicate generally the localities where such production takes place?

A. There is production of Pennsylvania grade oil immediately north of Elm Run in the direction of Braden, also in a northwesterly direction; there is a small production in the neighborhood of our Briscoe Station northwest from Elm Run; also at the point marked Horse Neck, Eureka, Goose Creek, Petroleum——

Q. I do not mean that you should indicate every town, but I want the general locality. Those places that you have referred to are in either Ritchie County or Wood County or Pleasants County. Now, in what other general localities north of the line running through Elm Run is there any production of Pennsylvania grade, in addition to the points or the general localities that you have named, if there are any?

A. In addition to the points I have named, there is produced north of Elm Run Pennsylvania grade oil in Doddridge County, Tyler County, Wetzel County, Marion County, Monongalia
284 County, Harrison County, Marshall County, Ohio County, and also Brooke County.

Q. With the exception of so much of the oil produced in the neighborhood of Eureka as goes to the St. Mary's refinery, do you not know whether the rest of the oil so produced as you have described, goes out of the State or not?

Mr. Avis: Are you referring to the physical oil?

Mr. Crawford: I am referring to the physical oil, in all my questions now.

A. Yes, sir, with that exception the oil does go out of the State.

Q. That is, all the oil produced in the State of West Virginia north of a line running east and west through Elm Run, except that which goes to the St. Mary's refinery, is that right?

A. Yes, sir, and the small deliveries mentioned at Downs Station.

Q. Oh, yes, amounting to forty or fifty barrels a year, did you say?

A. About forty or fifty barrels a year.

Q. And the same is true, is it not, of the oil produced on the line running down to Sand Fork or from Sand Fork, rather?

A. Yes, sir.

Q. All of that goes out of the State, does it not?

A. All of that oil goes out of the State.

285 Q. And is it not true that you know whether the Pennsylvania crude oil recovered at the Ohio River, as you have described, into the pipes of your company, with the exception of such

part of it as may reach the St. Mary's refinery, all passes through West Virginia and out into Pennsylvania again; is that not true?

A. Yes, sir, that is true.

Q. There is no difficulty in telling that, is there?

A. No difficulty whatever.

Recess.

286 Afternoon Session.

Q. Mr. Kenney, before asking you any other questions in regard to your testimony, I call your attention to Plaintiff's Exhibit 3, third map, and ask you whether in accordance with the understanding that we had with counsel, you have had placed upon this map arrows indicating the direction of the flow of the different parts?

A. Yes, sir. In connection with Mr. Fuller, the engineer, I showed him the direction of the flow of oil through all the lines as indicated by the arrows on that map.

Q. I call your attention to the station marked as Doll's Run on the line leading to Morgantown from the junction of your pipes with those of the South West Pennsylvania Pipe Lines, and ask you to notice that on the map there is an arrow pointing northeast in the direction of the red line which is south of Doll's Run Station, and an arrow pointing southwest on that part of the red line which is north or northeast of Doll's Run Station. Does that indicate that oil comes from both directions into that station?

A. Yes, sir, the oil comes from both directions into our lines at Doll's Run Station.

Q. And the oil which so comes from Downs as indicated by the arrow to the southward of the main line stops at Doll's Run,
287 at least it does not go any further north than Doll's Run?

A. It does not go any further north than Doll's Run.

Q. And the oil which comes down from Mt. Morris as indicated, to Doll's Run Station, does not go any further south than from that station?

A. No, sir, that oil does not go any further south than Doll's Run Station.

Q. There is one other point a little confusing, and that is the situation west of the station marked Minor in Pennsylvania and that marked Bula, in West Virginia. I say it is confusing as to the direction. Will you please explain that situation?

A. The oil from Bula Station close to the West Virginia line within the State of West Virginia goes through our pipe to the State line where it is delivered to the South West Pennsylvania Pipe Lines at that point.

Q. Do you know where it goes from there?

A. The oil then goes through the South West Pennsylvania Pipe Lines pipe to Minor Station, marked on the map.

Q. There is a line partly black and partly red leading south from Minor Station, a very short piece of line. What does that indicate?

Q. The pipe leading from Minor Station at that point runs into

West Virginia for a short distance. The pipe shown in West
288 Virginia is the property of The Eureka Pipe Line Company.
This oil is then delivered back at a point not far distant to the South West Pennsylvania Pipe Lines at the State line, and they receive the oil into their station.

Q. What is the meaning of the double arrow which appears to the left or the west side of the four parallel black lines representing a principal part of the system of the South West Pennsylvania Pipe Lines, just north of the Pennsylvania State line?

A. The arrow pointing in the direction of the West Virginia State line indicates the course of the stream of Mid-Continent oil that is delivered to the Eureka Pipe Line Company at the State line through three of those pipes.

Q. What does the other arrow mean? There appears to be a double arrow?

A. The other arrow pointing in the same direction represents the line containing Pennsylvania grade oil that is entirely separated from the other three lines which goes in the direction north. That arrow is a mistake.

Q. You say the arrow is a mistake?

A. The arrow on this side should point north.

Q. Then do I understand you to mean there should not be any double arrow there? When I say double arrow I mean a line having at one end of that line an arrow head, and there appears to be such a thing on that map. You say that is a mistake?

289 A. The arrow at this fourth line should point in the opposite direction.

Q. What do you mean by opposite direction?

A. North.

Mr. Crawford: Please have Mr. Fuller come here and explain to him how that should be corrected and let us have it correct.

The Witness: That was a mistake.

Q. Speaking of the fourth pipe of the four which we are considering and which you say is used to carry Pennsylvania grade oil, does that Pennsylvania grade move in more than one direction? I mean at different times, or does it all move in some one direction?

A. It has moved in a northerly direction in that one particular pipe for over a year and a half.

Q. And moved from Doll's Run or from that starting point?

A. The oil is moved from our Down's Station to Doll's Run, and when we deliver oil to the Pennsylvania State line the oil moves in a northerly direction from Doll's Run Station.

Q. Does it move on to Ewings then?

A. Yes, sir.

Q. Prior to a year and a half has the pipe been used for transporting oil in the other direction?

A. A number of years ago it was used for transporting oil
290 south to Morgantown.

Q. That is the only significance to be given to the double arrow, is it?

A. That is the only significance.

Q. You were asked in substance yesterday I think in connection with the testimony to the effect that oil was pumped from the Pennsylvania State line to Morgantown under the force applied by pumps at Ewings, and you were asked whether the expense of pumping was taken into consideration as between the South West Pennsylvania Pipe Lines and the Eureka. And as I recall you said not that you knew of. You don't yourself know anything about the making of tariffs, do you?

A. No, sir, I do not.

Q. You don't know anything about how any division of rates is arrived at, do you?

A. No, sir.

Q. And you don't know of your own knowledge whether that matter of pumping is adjusted between the two carriers on the division of the rates or not?

A. Of my own knowledge I do not know.

Q. You have used several times the word "column," and it has been used by counsel. Will you please explain what you mean by it, a column of oil? That is, what you mean by it in the testimony that you have given?

291 A. By using the term "column" I meant a separate batch of oil pumped through one or more lines, displacing a different grade of oil in those lines.

Q. When you say "lines" you mean pipes, don't you?

A. Pipes.

Q. And you mean pumped simultaneously through one or more pipes?

A. Yes, sir.

Q. That is to say, to take the example of System No. 2 as you describe it, consisting of five pipes leading northeast from Morgantown, if you were sending a shipment forward of one grade of oil through those five pipes, that would be one column, would it?

A. That would be one column, yes, sir.

Q. And it would be one column until you stopped pumping that kind, wouldn't it?

A. Yes, sir.

Q. You were asked in regard to the delivery of contaminated oils to connecting carriers, whether there was any adjustment of prices made between the two carriers on account of such mixture, and you stated that your company did not own any of the oil that passed through its lines. Does your company make the prices of any of that oil?

A. No, sir, it does not.

292 Q. So far as you know, does any one of your connecting carriers make the prices of oil which you deliver to it?

A. As far as I know they do not.

Q. In other words would it be possible for any adjustment of prices of oil to be made between connecting carriers?

A. No, sir, it would not.

Q. And whether there be any such adjustment of prices made

between other people as the shipper and the consignee, you don't know, do you?

A. No, I do not.

Q. I mean of course made on that account?

A. Yes, sir,—I do not know.

Q. You spoke at one time in your testimony about traffic regulations. What did you mean by traffic regulations?

A. I meant by traffic regulations the necessity of handling different oils at different points, and that we were controlled in the handling of that oil by the traffic necessities.

Q. Did you refer to any printed or written regulations or did you simply refer to the conditions of the traffic?

A. I mean the conditions of traffic, no printed regulations whatever.

293 Q. Referring to System No. 2 as you have described it, consisting of five pipes leading northeast from Morgantown, when you start to pump Mid-Continent oil through that system at any time how many of the five pipes do you use?

A. We use all of the five pipes in No. 2 System for that oil.

Q. And the same is true, is it, when you are pumping Somerset, or Somerset-Cabell?

A. Somerset and Cabell, yes, sir.

Q. And the same is true when you are pumping Corning's?

A. Yes, sir.

Q. That is, the five pipes in that system are operated as a unit for each one of those three grades, are they?

A. Yes, sir, they are.

Q. So that under your system of handling the oils that arrive at Morgantown and are sent on their way from there, while you are pumping on Mid-Continent there is no possibility of any Corning or Somerset being moved?

A. No, sir, it cannot be moved.

Q. And in similar fashion, when you are pumping Corning, or Somerset, or Somerset-Cabell, there is no possibility of moving Mid-Continent?

Mr. Avis: What do you mean by "possibility?" You mean in point of practice?

294 Mr. Crawford: I mean that under the business system which you have described of operating all five pipes as a unit, it is not possible to move more than one of these grades at the same time?

Mr. Avis: In those pipes you mean?

Mr. Crawford: In those pipes.

A. No, sir, there is not.

Q. Is there any mixture of Corning oil, Somerset oil, or Somerset-Cabell oil and Mid-Continent oil, or of any two of them in your system except such as may arise from the contamination due to one column following another?

A. No, sir, there is not.

Q. You stated that you delivered a certain amount of Mid-Conti-

nent grade to the Pure Oil Company. Is that delivery made at the point indicated on the map by the beginning of the green line just west of Morgantown?

A. The delivery is made from our main line through the short red line indicated on the map into the Pure Oil Company's tank.

Q. At the point I mentioned?

A. At the point you mentioned.

Q. Do you know what becomes of the Mid-Continent grade that is delivered there?

A. That oil is then pumped by the Pure Oil Pipe Line Company into the State of Pennsylvania to Marcus Hook, I believe.

295 Q. You testified as to the production of a small amount of Somerset oil in Wayne County which was delivered by you at the Kentucky State line I believe to the Cumberland Pipe Line Company, is that correct?

A. Yes, sir, that is correct.

Q. How does that Somerset oil compare with the Somerset oil from Kentucky in grade?

A. It is considered a similar grade as Somerset oil.

Q. You mean considered commercially?

A. Yes, sir, commercially it is considered a similar grade.

Q. Is that oil carried from the point where you deliver it to the Tug River Station by the black loop which is shown here to the west of Tug River in Kentucky?

A. Yes, it is carried by the black line indicated on the map back to the State line at Tug River.

Q. You mean of course it is carried by a pipe which is represented by that black line?

A. Yes, sir, that is my meaning.

(The black — then referred to was then marked on all three maps present, marked Plaintiff's Exhibit 3, Third Map, by Mr. Fuller.)

296 Q. Can you state approximately the amount of Somerset oil that you receive in that way from Wayne County and which is transported through the loop in Kentucky?

A. It is very small. If I remember correctly, it is not over 10 or 12 hundred barrels per year.

Q. Mr. Kenney, my attention is called to the point that you testified yesterday or the day before, or so it was understood, that the Eureka did not receive and transport any oil—and by transport I mean use its main lines on to the State line of Pennsylvania—any oil from Cabin Creek. Could you possibly have made any error in that testimony?

Mr. Avis: Mr. Crawford, do you mean in the Cabin Creek District as he has defined it?

Mr. Crawford: Yes, the Cabin Creek District.

Mr. White: The Cabin Creek District includes Kelleys Creek.

A. I did state that we had not handled any such oil during the past year, but after refreshing my memory I find that that was an error and that we did handle some of that oil several months ago.

Q. Was it within the twelve months that we have been speaking about?

A. Yes, sir, it has been within the twelve months mentioned.

Q. You testified as follows:

"Q. Now you take oil that is produced in the Cabin Creek
297 section of Kanawha County, what is the course of that oil?

"A. The oil produced in Cabin Creek, Kanawha County is owned by the Ohio Cities Gas Company, and refined by them, I believe, in their refinery at Cabin Creek.

"Q. Then none of that oil is transported beyond the limits of the State by your company?

"A. Our company has transported some of that oil, but not within almost a year."

You now say that within the twelve months ending June 30th, 1919, your company has transported some of the oil produced in the Cabin Creek section beyond the limits of the State?

A. Yes, sir, we have.

Q. What about the Ohio Cities Gas Company and the oil which you say is owned and refined by them? Does your company transport that or do they transport it themselves?

A. They transport it themselves. We have absolutely nothing to do with that oil.

Q. You did not deliver the oil to the refinery of the Ohio Cities Gas Company?

A. No, sir, we did not.

Q. And you did not mean to so testify?

A. No, sir, I did not.

298 Recross-examination.

By Mr. Avis:

Q. You mean by that, that you have nothing to do with it before it is refined or after it is refined?

A. We have nothing to do with it either before or afterwards.

Q. For whom do you transport oil from Cabin Creek territory, which embraces Kelley Creek and the other territory which you mentioned?

A. We transport a certain amount of oil from the Cabin Creek field, when the Ohio Cities Gas Company has a tender of a shipment issued for a certain amount of that oil to be delivered without the State.

Q. You stated yesterday as I recall that you did not transport some oil for producers other than the Ohio Cities Gas Company?

A. If I remember correctly there is a very small production of Pennsylvania grade oil in the neighborhood of Cabin Creek that we transport to our Mill Creek Station.

Q. May I have your attention to this map, please, being marked Plaintiff's Exhibit 3, third map. The black line that you referred to in your re-direct examination as being the line through which

oil was transported from Wayne County back to the Tug River Station. By whom was that line constructed?

A. The black line represents that portion of the line within
299 the State of Kentucky, and was constructed I presume by the Cumberland Pipe Line Company.

Q. That line is not used for the transportation of any oil whatever except that produced in Wayne County to which you referred, is it?

A. I do not know positively whether there is any other oil that goes into that line in the State of Kentucky. There is no oil going into that line represented by the short red line in Wayne County except the Wayne County production.

Q. How long is the line that belongs to the Eureka Pipe Line Company through which that oil is transported?

A. I do not recall the exact distance but I believe it is only a few miles.

Q. Approximately how much?

A. It is only a few miles, if that much.

Mr. Crawford: What do you mean by "a few miles?" Do you mean one or two, or twenty or thirty?

The Witness: I would say one or two miles. I am not sure on that point.

Q. The pipe represented by the black line on the map and which you say belongs to the Cumberland Pipe Line Company, through which this Wayne County oil is transported from Wayne County through Kentucky back to the Tug River Station, is about how long?

300 A. I really could not answer that question. I do not know.

Q. There is a scale to this map which you are referring to, is there not?

A. Yes, sir.

Mr. Crawford: The scale is one inch to eight miles.

Q. I don't think I clearly understood you, Mr. Kenney, in your statement in regard to oil flowing from Downs to Doll's Run and Mt. Morris and back to Doll's Run, if that is what I understood you to say?

A. Yes, sir, that is correct, from Mt. Morris to the State line.

Q. The oil that goes is some of the production of oil which flows from Mt. Morris to the State line and then goes into a single line and then connects with the four red lines you have already referred to?

A. It then connects with one of the four red lines.

Q. Does any other oil flow from Mt. Morris in that line except the oil that is produced in the neighborhood of Mt. Morris?

A. No, sir.

Q. No oil goes from West Virginia to Mt. Morris?

A. No, sir.

Q. Through any line?

A. No, sir.

301 Q. As I understood you, some oil went to one of those stations from West Virginia and then came back into West Virginia. Was that to Minor?

A. That was to Minor Station.

Q. Is oil produced at Minor Station?

A. There is some local production at Minor Station in Pennsylvania, and also some production in and around Bula Station in West Virginia.

Q. The oil that is produced at Bula, does that go to Minor?

A. That oil goes through a pipe from our Bula Station to the State line and is then carried by the South West Pennsylvania Pipe Lines in their pipe to Minor Station.

Q. And then from Minor Station where does it go?

A. From Minor Station the oil is pumped through a pipe to the West Virginia State line and connects into a pipe owned by the Eureka Pipe Line Company, which for a small distance runs through West Virginia and which connects back at the Pennsylvania State line to a pipe owned by the South West Pennsylvania Pipe Lines.

Q. There seems to be a single line marked in red connecting with your line near Bula Station in a direct line connecting with your four lines that connect with the South West Pennsylvania Pipe Lines and parallel with the Pennsylvania State line marked 4". What line is that and for what is it used?

302 A. That was a pipe that extended through West Virginia along the State line across and was connected into one of the four lines indicated by the red lines on the map.

Mr. Crawford: What is the condition of it now, Mr. Kenney?

The Witness: This line has not been used for eight or ten years and is disconnected at both ends and not in use.

Mr. Crawford: And it was so during the twelve months we have been considering?

The Witness: Yes, sir.

Q. It is a fact, is it not, Mr. Kenney, that oil produced in West Virginia goes through your line a very short distance, connects into the line of the South West Pennsylvania Pipe Lines to Minor Station, and then comes back into West Virginia? Is that correct?

A. And then comes back and connects into our lines at the State line, and in return is handled through a small portion of our line and delivered to the State line a short distance from the point in which we receive it. It is delivered back to the South West Pennsylvania Pipe Lines at the State line and then is taken on to their Ewings Station.

Q. None of that oil comes back and reaches Morgantown, does it?

A. No, sir.

303 Q. I note a line or an arrow from Downs in the direction of Minor. Where does the oil go to that goes through that line from Downs?

A. The oil is pumped into that line by Downs Station and is delivered to the South West Pennsylvania Pipe Lines at the Pennsylvania State line.

Q. Does any of that oil return to the State of West Virginia?

A. No, sir.

Q. It is Pennsylvania grade oil, is it?

A. That is Pennsylvania grade oil.

Q. What is the necessity of oil going from Downs Station to Doll's Run and then back into one of the four lines that run into Morgantown?

A. It is necessary to pump some oil from Downs Sation to Morgantown by way of that route, as the three lines represented by the red lines running direct from Downs to Morgantown are not of sufficient capacity to handle the oil that we are called upon to pump.

Q. Does any of that oil that you pump through that single line running to Doll's Run Station go out of the State before it reaches Morgantown?

A. Some of that oil goes out of the State in a northerly direction, northwest from our Doll's Run connection, and is delivered to the South West Pennsylvania Pipe Lines at the State line, and then is moved on by them to Ewings Station.

304 Q. Does any of that oil that goes through the line reach Mt. Morris and then return from there into West Virginia?

A. There is none of that oil from that line reaching Mt. Morris. I said a short while ago that we had no oil going to Mt. Morris, but refreshing my memory we have a small amount of oil that we deliver at the Pennsylvania State line from our Core Station that does reach Mt. Morris.

Q. And returns to your lines in West Virginia?

A. And is pumped by Mt. Morris to the West Virginia line and delivered back into our line at that point.

Q. That oil mixes with oil that is produced at Mt. Morris, does it not?

A. Yes, sir, the Pennsylvania grade oil being the same grade of oil.

Q. And when it returns to your line it is a mixture of that produced in Pennsylvania at Mt. Morris and that produced in West Virginia at Core Station?

A. Yes, sir, it is.

Q. Isn't that also true of the oil that goes from Bula to Minor Station and back to the lines in West Virginia a short distance?

A. Yes, it is.

Q. Mr. Kenney, you were asked a question as to whether it were possible for you to handle more than one grade of oil through

305 your five pipes or lines of pipe leading from Morgantown northeast, which question was accompanied by an explanation of the word "possible" or "possibility", that it meant under your business system, and you answered that it was not. That is in substance correct, is it not?

A. Yes, sir.

Q. Isn't it possible for you to handle one grade of oil through one of those five pipes and another grade of oil through the second and another grade through the third and another through the fourth and another through the fifth at the same time?

A. No, sir, it is not. We are controlled in the situation by the ability of our connecting carrier to handle that oil, and we cannot put a different grade of oil in one or the other of any of the five lines at the same time.

Q. It is physically possible, is it not, for you to use one line or one of those pipe lines for the transportation of one oil, and one for another?

A. It is physically possible for the Eureka Pipe Line Company, but the lay of the lines of our connecting carrier makes it impossible for us to put any other oil, any other different oil in any of the five lines at the same time.

Q. What connecting carrier are you referring to at that point?

306 A. The Southern Pipe Line Company.

Q. The Southern Pipe Line Company has the same number of lines at the point of junction with your lines that you have, has it not?

A. Yes, sir, I believe it has.

Q. And in order to use their five lines, you must use your five lines to deliver to it, is that what you mean?

A. Yes, sir.

Q. If it suited their convenience to use two lines of pipe, you could use two lines of pipe, could you not?

A. If it were possible for them to separate the oil in that way, we could do so.

Q. There are seven lines that lead from Morgantown to your connection with that carrier, are there not?

A. There are seven lines leaving Morgantown on that route.

Q. Two of which lines are used for the transportation of Pennsylvania grade as I understand it?

A. Yes.

Q. And five of which are used for the transportation of inferior grades?

A. Yes, sir, that is correct.

Q. The two are never used for the transportation of any of the inferior grades?

A. No, sir, they are not.

307 Q. And the five are never used for the transportation of Pennsylvania grade?

A. No, sir.

Q. They connect with the seven lines that belong to the connecting carrier, those seven lines of yours?

A. They connect with the seven lines belonging to our connecting carrier at the State line, seven pipes.

Q. I note that the lines of the connecting carrier after they go a certain distance are reduced to five lines on this map, or five lines of pipe, is that true?

A. I believe it is.
Q. I wish you would look at the map.

Mr. Crawford: If he knows.

Q. It is shown on the map I believe.
A. The map indicates that the seven lines leaving Morgantown are turned into five lines somewhere in the territory of our connecting carrier.
Q. Do you know which of those lines was cut off when there is a reduction to five? Were they the lines that connect those lines of yours that transport the Pennsylvania grade, or the pipe lines which connect with yours that transport the inferior grades that you have referred to?
A. I am not personally familiar with the lines in the Southern Pipe Line Company and cannot answer that question.
308 Q. You do not know, then, why they were reduced to five lines at that point on the map which you have had called to your attention, of your own knowledge?

Mr. Crawford: If you do not know say so, Mr. Kenney.

A. I do not know of my own knowledge.
Q. On this map the five lines are subsequently reduced to three pipe lines, are they not?
A. Yes, sir, that is correct.
Q. And you dont 'know why the five are reduced to the three as shown on the map, do you?
A. I do not know, no, sir.
Q. Can you give any explanation, Mr. Kenney, for the necessity of using five lines at one time to transport inferior grades of oil except as a matter of convenience to the connecting carrier to whom you deliver this oil?
A. As I said before, we are controlled by——
Q. (Interrupting.) Won't you answer the question and then explain, please, Mr. Kenney?

Mr. Crawford: He is giving his answer. You asked him if he can give any other reason and he is now giving it.

(The question was repeated by the stenographer as follows:)

"Q. Can you give any explanation, Mr. Kenney, for the necessity of using five lines at one time to transport inferior
309 grades of oil except as a matter of convenience to the connecting carrier to whom you deliver this oil?"

Mr. Avis: I think that question should be answered by yes or no, and then explain it. It is a categorical question.
Mr. Crawford: All right, go ahead.
The Witness: The arrangement——

Q. (Interrupting.) Won't you answer yes or no, and then explain, Mr. Kenney?
A. I don't get the purport of your question.

(The question was repeated by the stenographer as follows:)

"Q. Can you give any explanation, Mr. Kenney, for the necessity of using five lines at one time to transport inferior grades of oil except as a matter of convenience to the connecting carrier to whom you deliver this oil?"

A. I can, yes, sir.

Q. Please give it?

A. The arrangement of the system is such that the five lines——

Q. (Interrupting.) The arrangement of whose system?

A. The arrangement of our system is such with reference to the lay of the country that it is necessary to use more than one line out of Morgantown to the State line which goes up the mountain, than it is to handle all the oil we can get through
310 those five lines beyond that point in the lines owned by our connecting carrier.

Q. The lay of the land is such that you can use two of those lines, isn't it, to transport Pennsylvania grade in so far as your company is concerned?

A. We could use any one of the several lines, pipes, for any particular oil, as far as the arrangement of our lines is concerned.

Q. Then as far as your lines are concerned you can use any one or more of those lines for the transportation of any grade of oil that travels through your lines in West Virginia?

A. Yes, sir, we could do so, if our connecting carrier could meet such an arrangement.

Q. Well, it would be possible for you to deliver to your connecting carrier as far as your company is concerned, but it might not be possible or might not be convenient for him to further transport it, if it were delivered to him in one line?

A. Yes, sir, that is true.

Q. Suppose that you deliver it to the connecting carrier in a tank at that place or tanks, you could easily operate one or more lines, couldn't you?

Mr. Crawford: What place?

Q. At the State line, for the tranportation of your grade oil or any particular oil?

311 A. That would be possible, yes, sir.

Q. When you receive oil from the Cumberland Pipe Line Company at your Tug River Station, it is received in tanks, is it not?

A. Yes, sir, it is.

Q. When you receive oil from the Buckeye Pipe Line Company from Ohio, it is received in tanks at five places I believe you stated?

A. Yes, sir, it is received at the State line and then put in the tanks at our stations.

Q. If your connecting carrier, the Southern Pipe Line Company, had tanks at or near the State line it would be very easy for you to use any one of those seven lines for the transportation of any particular grade of oil, would it not?

A. Not without considerable expense in the way of arranging our

pipes at Morgantown Station, which would require considerable duplication of pipes and expense to do so.

Q. Were your lines from Morgantown to the State line, where they connect with the lines of the Southern Pipe Line Company, arranged to suit their line or were their lines arranged to suit yours?

A. I could not answer that question because I do not know.

Q. It is the force of your pumps at Morgantown that transport-
that oil into the lines of the Southern Pipe Line Company
312 and on through its journey through Pennsylvania, is it not?

A. The force of our pumps on those lines at Morgantown moves the oil through our lines to the State line, and then on through the lines of our connecting carrier, the Southern Pipe Line Company, to their next station which is known as Watson Station.

Q. What distance is that?

A. About 31 or 32 miles I believe.

Q. It is placed in tanks at Watson Station, is it not?

A. I could not say.

Q. As an oil expert or rather an expert in the transportation of oil, would it not necessarily have to go into tanks to be pumped from Watson Station?

A. There are cases where the oil in a similar system of lines is not received in a tank. It is handled through one or more stations, the oil coming in goes through the suction of the relaying pump and then on to the next station, but in the course of a few stations it does go into a tank where it is checked.

Q. Haven't you ever been to Watson?

A. No, sir, I have not.

Q It is a fact, is it not, that all the oil that you receive from connecting carriers except the South West Pennsylvania Pipe Lines
goes into a tank at the point of receipt or very near thereto in
313 the State of West Virginia?

A. That is true, yes.

Q. You stated near the beginning of your re-direct examination that the holding of oil in tanks was not for the convenience of shippers but on account of the exigencies of your business. Do you desire to make any correction to that statement?

A. No, sir, that statement is correct.

Q. It is true, is it not, that it is the practice of your company in receiving oil for transportation and before the same is transported, to give to the owner thereof a receipt stating therein the number of barrels or gallons so received and the grade, gravity, and measurement thereof—is it not?

A. Yes, sir, it is.

Q. And is it your custom and as a matter of fact a requirement of law, if you know, that you are required to hold that oil and transport and deliver the same at any delivery station within or without the State on the route of your pipe lines which may be designated by the owners of the oil so delivered to you?

Mr. Crawford: I object to that question as incompetent. This man is not a lawyer and is not competent to construe an act of the State of West Virginia.

Mr. Avis: If you can.

Mr. Crawford: I object to the question further on the ground that it is dual. It contains two entirely separate questions. I
311 have no objection to your asking him as to the custom of the company. My objection goes to the assertion contained in the question that it is an obligation of law for the company to do certain things.

Mr. Avis: I will abandon the question.

Q. When oil is offered to you for transportation and is not consigned to any person, firm or corporation, or to any delivery point, what is done with that oil until the ownership thereof is assigned, or the oil is assigned to some particular person, firm or corporation, or to some delivery point?

A. The physical oil moves into our regular stream of oil and may leave the state. The company is compelled to hold an equal amount of similar oil in its tanks to meet the demand for delivery of an equal amount of that same grade of oil.

Q. Does the company do so?

A. It does.

Q. How much oil did you hold in that way during the year ending June 30th, 1919?

A. I am not familiar with the general books and cannot say.

Q. Is there any particular place where you hold that quantity of oil for delivery, the quantity of oil that is so given to you for transportation?

A. That oil is held generally at any point within the territory of the Eureka Pipe Line Company.

315 Q. That is, throughout the State of West Virginia?

A. Throughout the State of West Virginia, yes.

Q. I believe you stated you have no idea how much oil was held in that way last year?

A. I have not.

Q. It is not all held in tanks, is it? Some is kept in the lines, is it not?

A. Some of the oil stands in the pipes that are always full of oil.

Q. And you are required, are you not, to deliver that oil at any delivery station on the route of your lines that the owner of the oil may elect?

Mr. Crawford: I object to that as calling for an opinion or legal application or construction of an act of the State. This witness is not qualified to pass upon that.

Mr. Avis: I will withdraw it.

Q. Suppose oil is delivered to you by the owner thereof in the Carbon Creek oil field, and he should indicate subsequently as the delivery station of that oil the Elk Refining Company, whereabouts would that oil be held?

A. An equal amount of that oil would be held at our Mill Creek Station.

Q. In tanks?

A. An equal amount of similar oil, similar grade oil would
316 be held in tanks at our Mill Creek Station.

Q. You don't hold in your tanks at Mill Creek Station all of the oil that is so delivered to you which is not consigned to any delivery point?

A. No sir, the physical oil moves along in a continuous current.

Q. What is the capacity of your storage tanks at Mill Creek Station?

A. We have two iron tanks of the capacity of 10,000 or 11,000 barrels each I believe.

Q. During the year ending June 30, 1919, didn't you receive from the owners of the oil produced in the Carbon Creek field for transportation a greater quantity than 22,000 barrels that was unconsigned?

A. I do not think so.

Q. I don't mean by that, that you received 22,000 barrels at any one time, but at odd times aggregating 22,000 barrels or exceeding 22,000 barrels which was unconsigned?

A. I could not state definitely the amount of any oil received at Mill Creek Station that was unconsigned.

Q. Assuming that during the year ending June 30th, 1919, there had been delivered to you by the owners for transportation a quantity exceeding 22,000 barrels of oil which was unconsigned, and that those owners should subsequently direct you to
317 deliver the quantity that you had received from them at the Falling Rock Refinery, how would you meet that demand on the part of the owners?

A. As the physical oil had gone on in the regular current or stream of oil leaving our Mill Creek Station, we would meet the obligation by delivering them a like amount of similar grade oil from our Mill Creek Station.

Q. Suppose you did not have that quantity at the Mill Creek Station, how could you deliver it from that station?

A. In that case the oil could not subsequently be ordered delivered to the Elk Refining Company if we had no other oil at Mill Creek Station.

Q. Couldn't you bring the oil back from some other station?

A. The current of oil from Mill Creek flows for a distance west, and then north in the general current of oil. There is no flow in the southern direction.

Q. Then in the case that I have just put, you would be unable to fill the demand that would be made upon you for the delivery of oil at the Elk Refinery?

A. Some arrangement probably would necessarily have to be made to meet the demand for delivery of that oil. What arrangements I do not know.

Adjourned to Thursday, November 20, 1919, at 10:15 A. M.

Last Plaintiff's Exhibit—3.

318 THE EUREKA LINE COMPANY

vs.

WALTER S. HALLANAN et als.

New York, November 20, 1919.

Met pursuant to adjournment at 10:15 a. m.
Same appearances.

JOHN J. KENNEY resumed the stand.

Recross-examination.

Continued by Mr. Avis:

Q. Mr. Kenney, just before the conclusion of your examination yesterday you were asked the question that if oil were tendered to you for transportation from the Cabin Creek field which was unconsigned, that you would keep in the tanks at Mill Creek a sufficient quantity to meet the quantity which was so delivered to you. Is that true all along your line, that when oil is delivered to you in quantities unconsigned, you keep a sufficient quantity on hand at the nearest tanks for delivery or to meet the orders of the owner when he does consign it?

A. No sir, we move the oil along in a continuous stream and do not particularly hold it at any point for any person or corporation. The Eureka Pipe Line Company has at all times in its pipes and tanks moving along, sufficient stock of any grade to cover its obligations.

Q. Then the storage that you refer to, to meet the orders of the owners who deliver to you unconsigned, is both in your
319 tanks and in your lines, is it not?

A. The stocks we have are in our pipes and in our tanks, moving along.

Q. And you keep no particular quantity at any one place to meet the orders of the owners nearest to that place?

A. We do not.

Q. Yesterday you stated in effect that all the oil produced in West Virginia north of Elm Run except a small quantity that was delivered at Downs went out of the state, I believe did you not?

A. Yes sir, that is correct.

Q. The oil that is produced north of Elm Run of producers or owners who deliver to you for transportation, unconsigned, is how held or stored until it is consigned?

A. That oil is not held. It moves along through our pipes with the stream of that particular grade of oil, and is not held in our pipes or tanks.

Q. Then you expect if the owner should consign that oil to any point other than a point that would have to go through the Mor-

gantown Station, you would have to draw oil from some other place on your line to meet his order, would you not?

A. We would deliver an equal amount of the same grade and quality of oil at any of the terminals on our line that he might so designate.

320 Q. You have spoken of three refineries in West Virginia, namely, the refinery at Elk, on the Elk River in Kanawha County; the refinery at Saint Mary's, and the Parkersburg Refinery, and I believe you stated that the Parkersburg Refinery was owned by the Standard Oil Company of New Jersey, who owns the other two refineries if you know?

A. I do not know that I could correctly answer that question.

Q. Do you have any dealings with those refineries or any correspondence with them as assistant superintendent of The Eureka Pipe Line Company?

A. Nothing except the matter pertaining to the physical delivery of oil to them each day or couple of days.

Q. In what names do you receive your orders for delivery of such oil?

A. The orders for delivery of oil to the Elk Refining Company are issued in that way; that is; we are instructed to deliver so much oil to the Elk Refining Company at Falling Rock.

Q. But in whose name is the order given or the instructions?

A. The order comes through the general agent.

Q. Of The Eureka Pipe Line Company?

A. Yes, of The Eureka Pipe Line Company.

321 Q. And where does he have an office?

A. Oil City, Pennsylvania.

Q. Who is he?

A. Mr. V. S. Swisher.

Q. Do you know whether Mr. Swisher is the officer of the South Penn. Oil Company or an employee of the South Penn. Oil Company?

A. I do not think he is. I could not say definitely, but I do not think he is.

Q. How do you know as to the ownership of the Parkersburg Refinery and don't know as to the ownership of the other two refineries?

A. I only know in a general way that the refinery at Parkersburg is supposed to be owned by the Standard Oil Company of New Jersey. In the same general way I know that the Elk Refinery is owned by the corporation known as the Elk Refining Company, having no connection with the other refining companies, that is the Parkersburg Refinery.

Q. You don't know that it has no connection?

A. I do not know.

Q. Whether it has or not?

A. I do not know, no sir.

Q. And you do not know whether the refinery at Saint Mary's has any connection with the Standard Oil Company of New

322 Jersey or not?

A. No, I do not know, but in a general way I do not think they have.

Q. I believe you stated some time during the course of your examination that after a certain period of time you made a charge to the owners for the storage of oil that you said was in the nature of a demurrage. That is true, is it not?

A. There is a storage which I would consider more of a penalty charge against the credit balance remaining untendered for a certain period. This charge——

Q. (Interrupting.) By "untendered" you mean unconsigned, don't you?

A. Unconsigned, yes, remaining unconsigned after a particular period. This charge is to cover the additional expense of maintaining tankage, insurance, and also the loss sustained by evaporation, by virtue of the fact that the holder of this credit balance fails to tender his oil.

Q. By the use of the word "tender" do you mean fails to consign it to some one or to some person or place for delivery?

A. Yes sir, that is the meaning.

Q. Is that charge by the month or day or what?

A. That part of the business does not come under my direction, so I do not feel able to properly answer the question.

Q. You were asked this question yesterday by counsel for
323 the plaintiff, in referring to oil that was held in tanks, and this was a question that he propounded to you:

"Q. Did your company receive from any one any compensation for holding the oil in those tanks at any time?

"A. Not that I know of, no, sir."

Mr. Crawford: Please either read something what goes before it or else add to that question the statement of what tanks I was talking about.

Mr. Avis: I was going to follow up with a question, that I believe counsel was referring to tanks at Morgantown.

Q. Were you referring solely to tanks at Morgantown?

A. Yes sir, I was.

Q. Then you say that there is no charge made to anyone for oil that is stored at Morgantown in the tanks there?

Mr. Crawford: I object to the use of the word "stored," because there is no evidence that any oil is stored there.

Mr. Avis: He has explained what he meant by stored. The witness has already explained what is meant by the use of the word "storage," in the answer just previous to the question that I have quoted above. I will ask that the question be repeated.

"Q. Then you say that there is no charge made to any one for oil that is stored at Morgantown in the tanks there?"

324 A. The charge that I have spoken of as the penalty——

Q. (Interrupting.) Mr. Kenney, just pardon me for interrupting, but you have given the reasons for the charge that you have stated that you knew nothing about. It is in your tariff, isn't it, and says what it is for in the tariff, does it not?

Mr. Crawford: I object to that. The tariffs speak for themselves.

Mr. Avis: The witness keeps saying "a charge for penalty."

Mr. Crawford: The answers of the witness have been drawn out by your questions.

Mr. Avis: None of his answers were responsive to my question, that said that it was a charge for penalty. I asked him wasn't it a charge made for storage.

Mr. Crawford: I join with you in requesting the witness not to characterize the charge. I don't want him to call it a penalty any more than you do. Do not characterize the charge. Go ahead and say what the fact is about it, or what you are asked about it, but don't undertake to characterize it.

The question was repeated as follows:

"Q. Then you say that there is no charge made to any one for oil that is stored at Morgantown in the tanks there?"

325 Mr. Crawford: I object to it on the ground that the tariffs speak for themselves and this is not the best evidence, and the tariffs will be introduced in course of the testimony and are already part of the case by being attached to the bill.

Mr. Avis: My position is that the witness has several times volunteered that there was a charge made to owners of oil which is unconsigned for a definite period and has stated reasons for such charge that were not asked him, stating that it was in the nature of a demurrage or a penalty. The witness has also said that he knows nothing about the tariffs and has nothing to do with making them, and the last question propounded the witness about the tariffs was simply to develop the fact that the witness was referring to something he said he knew not of. I will ask that the original question be repeated:

"Q. Then you say that there is no charge made to any one for oil that is stored at Morgantown at the tanks there?"

A. The charge is made to cover the expenses.

Q. I didn't ask you that, Mr. Kenney. I still insist that I have not asked you the reasons for the charge. I am asking the bare fact if there is not a charge made for oil that is stored in the tanks at Morgantown, which you stated in reply to a question from
326 counsel for the plaintiff, which question was as follows:

"Q. Did your company receive from anyone compensation for holding the oil in those tanks at any time?" Referring to the Morgantown tanks, and you answered:

"A. Not that I know of, no sir."

I am asking you the question if it is not true that a charge is made to owners of unconsigned oil for storing or holding the same in the tanks at Morgantown?

A. That portion of oil in the tankage at Morgantown which is unconsigned is subject to its proportion of a share of the charge mentioned.

Q. In other words, your charge is for holding so much oil some place in the lines of the system or tanks and you are unable to identify the place where any particular physical oil of any particular owner is held, is not that true?

A. The charge is made against the unconsigned or untendered oil held in our pipes or tankage, at any point,—by using the word "held" I mean held although moving,—that is necessary for The Eureka Pipe Line Company to meet its obligations.

Q. I don't think that the answer is at all responsive to the question asked you, Mr. Kenney, and I will ask the stenographer to repeat the question and you to give strict attention to it and see if you cannot answer it categorically.

"Q. In other words, your charge is for holding so much
327 oil some place in the lines of the system or tanks and you are unable to identify the place where any particular physical oil of any particular owner is held, is not that true?"

A. We cannot identify the physical oil of any particular owner, no.

Q. And the storage charge that you make, may cover oil that is held in the tanks at Morgantown as well as in other places on any line of your company, is that not true?

A. The charge, yes, is against that proportion of the unconsigned oil that may be momentarily standing in the tanks at Morgantown, as well as other points.

Q. In one of your answers on re-direct examination yesterday, I understood you to say that if you piped or pumped oil through five pipes at one time, that that would constitute one column, and that the number of barrels contaminated would be the same as if you were pumping through one line or pipe. Did you mean to say that?

A. I do not think I made that exact statement. We do consider one column of oil as a column, although it may be one pipe or more, when those pipes are uniformly connected together.

Q. If those pipes were uniformly connected together and of the same size, and you used five pipes to pump at one time any particular grade of oil, the contamination would be five times as great as if you had a single line of pipe, would it not?

328 A. I could not say it would be five times as great, although I believe it would be greater than a single pipe.

Q. Does your records that you refer to as showing the number of columns of oil that you pump, do they show that when you are pumping through five lines of pipe, that you are only pumping one column?

A. When we pump oil through the Number 2 system from Morgantown, which contains five pipes, we so understand that to be one column.

Q. And your records show it only as one column?

A. Yes sir.

Q. When you pipe Somerset oil from your Tug River Station how many lines of pipe do you use?

A. You mean to the next point?

Q. Yes.

A. We use two pipes for a distance,—in other words, the distance between Tug River and Hamlin Station is about thirty-two miles, we use two pipes for a distance of about twenty-eight miles.

Q. To what point?

A. To a point about four miles south of Hamlin, where these two pipes go together, and that oil is handled through one pipe from that point to a distance of about four miles or so to Hamlin Station.

329 Q. Would you call that a column of oil?

A. Yes sir.

Q. Would your records show that as being one column of oil?

A. Yes sir.

Q. Wouldn't the contamination be less if pumped through two lines of pumps than it would be if pumped through five lines of pipe at one time?

A. It probably would be less, but it is impossible so far as I am aware to be able to state just how much less.

Q. Then in handling that Somerset oil some places you handle it through more than two pipes, do you not?

A. Yes sir.

Q. Sometimes through three pipes?

A. Yes sir.

Q. Sometimes through four pipes before it reaches Morgantown, do you not?

A. There is no point through which it is handled through four pipes before it reaches Morgantown.

Q. I notice that from Braden to Downs there is marked on the map four lines of pipe. Doesn't that Somerset oil pass through that line from Braden to Downs?

A. It passes through two of those pipes of that system.

Q. What are the other two kept for?

330 A. Pennsylvania grade oil.

Q. I notice from Elm Run to Braden there are three lines of pipes. Are all three of those used for your Somerset oil?

A. No sir, we use two pipes to carry the Somerset oil and one pipe to carry the Pennsylvania grade oil.

Q. I notice just south of Elm Run *to* a point on the map that I believe is noted as McFarlan, that there are four lines of pipe. Are those four lines of pipe used for the transportation of Somerset oil?

A. No sir.

Q. How many of them are used for that?

A. At that point two of them are used for Somerset oil.

Q. Then as I understand on its journey from Tug River to Morgantown, that Somerset or Somerset-Cabell mixture as it may be sometimes travels through one line of pipe, sometimes travels through two lines of pipes, and sometimes travels through three lines of pipe? Isn't that true?

A. That is correct.

Q. It never travels through exceeding three lines of pipe until after it reaches Morgantown, is that true?

A. That is correct.

Q. When it goes out of Morgantown to the State line where does your pipes connect with the Southern Pipe Line Company, it travels through five lines of pipe?

331 A. Yes sir.

Q. You don't mean to say or have it be understood that the contamination where it travels through one line of pipe or two lines of pipe or three lines of pipe as the case may be, is as great as the contamination where it passes through five lines of pipe, do you?

A. I don't think it is quite as great, although I cannot state the difference.

Q. Where it travels through one line of pipe the contamination would be less than where it travels through two lines of pipe, would it not?

A. I would think so, yes sir.

Q. And where it travels through two, it would be less than where it travels through three?

A. It should be, yes.

Q. And where it travels through three lines of pipe it would be less than where it travels through five lines of pipe?

A. Yes sir, I think so.

Q. When you gave your estimate of the contamination as being approximately a thousand barrels of oil for each column, what column did you mean, a column passing through one line of pipe, two lines of pipe, three lines of pipe or through five lines of pipe?

A. When I answered that question I think I qualified it by

332 stating that I could not say definitely the amount of contamination caused by the moving of those different columns.

Q. I understand that, but when you spoke of a thousand barrels contamination per column, top and rear, what column did you refer to, a column passing through five lines of pipe or a column passing through one line of pipe?

A. It would be a column passing through possibly the five lines of pipe.

Q. Possibly all five lines of pipe?

A. Yes.

Q. If your company should furnish to me the number of columns of oil transported and handled by your company during the year ending June 30th, 1919, and I should apply to those columns a thousand barrels each as being the total amount of oil contaminated, it would not approximately show the truth, would it?

A. The approximate figures given as a thousand barrels were only an approximation.

Q. I understand that, sir.

A. It was stated that the contamination might be greater at one point than at another point, and that would be due possibly to the greater number of pipes through which it passed.

Q. There must be some record kept, is there not, by your company, of the number of barrels of oil that is contaminated?

333 A. No sir, not that I know of.

Q. You say that when oil is contaminated it is passed on as

of the grade it nearest approaches, that is the mixture it nearest approaches. That is true, isn't it?

A. That is true, we do so.

Q. If a tender of shipment is made to you, we will say of seventy-five thousand barrels of Pennsylvania grade oil to be delivered to a certain individual and five thousand barrels of that oil should become contaminated and should nearest approach the grade of Mid-Continent oil, the five thousand barrels would go forward as of the grade of Mid-Continent oil, would it not?

A. I don't think there would be that amount of contamination——

Q. (Interrupting.) That is not the question.

A. But if it were we would deliver it as Pennsylvania grade oil because the tariffs under which we are working state that if there is a mixture with a certain grade of oil, although of an inferior grade or lower gravity, we are justified in making such a charge.

Q. You stated yesterday that in delivering it to your common carrier in a case of that kind, that you would deliver it as Mid-Continent oil, the contamination of which nearest approach- the Mid-Continent grade.

Mr. Crawford: The testimony is that the Pennsylvania grade oil goes forward in a different system from Mid-Continent. There
334 is no possible way of those two oils coming in contact. You must have forgotten that. That is spread all over the record.

Mr. Avis: I use that only as a hypothetical case. I do not care whether it is Somerset-Cabell.

Mr. Crawford: Wouldn't you rather correct it?

Mr. Avis: All right.

Q. If the case should be that Mid-Continent and Pennsylvania grade oil move through the same pipes, and it became intermixed to the extent that the Pennsylvania grade would be contaminated and would nearest approach in grade and quality the Mid-Continent, would that contaminated mixture go forward and be delivered to the connecting carrier as Pennsylvania grade or as Mid-Continent grade?

Mr. Crawford: I object to the question because although I have called the attention of counsel to the fact that the case he supposes could not happen as shown by the testimony, he nevertheless has put a hypothetical question which is contrary to the testimony, and I object to it as incompetent on that ground.

Mr. Avis: I take issue with counsel for the plaintiff that my hypothetical question embraces an impossibility.

Mr. Crawford: I do not say it embraces an impossibility. I say it is contrary to the testimony.

335 Mr. Avis: It is not something that could not happen, because I take it from the testimony of this witness that it could happen, and that they could put Pennsylvania grade and Mid-Continent through the same pipes in the same way that they can put Pennsylvania grade and Somerset, or Pennsylvania grade and Corning or any other grade of oil through the same pipes.

Mr. Crawford: The testimony is that the Mid-Continent oil is moved

through separate pipes throughout the entire time that it is being moved by The Eureka Pipe Line Company, from any Pennsylvania grade oil, and that there is no possibility under that system which they adopt in practice of the two oils ever coming in contact, and the testimony is very positive that they have not come in contact and never did come in contact. I insist that under the rules the question is incompetent.

Mr. Avis: Counsel may be right in his objection on the ground that the hypothetical question is not entirely based on the evidence, but it appears to counsel for the defendant that the objection is exceedingly technical, because it was simply used by way of illustration, and in order to accom-odate the technical objection of learned counsel for the plaintiff and to save time I will abandon the question and
336 put another question and substitute for the word "Mid-Continent" in my former question the word "Somerset-Cabell mixture."

Q. If a tender of shipment is made to you, we will say, of seventy-five thousand barrels of Pennsylvania grade oil to be delivered to a certain person, and five thousand barrels of that oil should be contaminated and should nearest approach the grade of Somerset-Cabell oil, the five thousand barrels would go forward as the Somerset-Cabell grade of oil, would it not?

A. If a tender of shipment of seventy-five thousand barrels of Pennsylvania oil were made, we would deliver a like amount to the consignee in accordance with the provisions of our tariff pertaining to any mixtures taking place between columns of oil while passing through our lines.

Q. Then you would deliver seventy-five thousand barrels of Pennsylvania grade oil, would you?

A. Yes sir.

Q. What would become of the five thousand barrels that would be contaminated and nearest approach the grade of Somerset-Cabell oil?

A. It is not customary for a mixture of that large amount to take place; but it would be a contamination between the two columns of the oil that move together, that is between the junction of the
337 columns of the two oils moving through the lines.

Q. And what would become of that contamination mixture out of a quantity of it, whether five thousand or less or greater?

A. The consignee would receive the contamination in with the delivery or tender of shipment for the seventy-five thousand barrels of the particular grade which it called for.

Q. Then if a tender of shipment is made to you of seventy-five thousand barrels of Pennsylvania grade, and five thousand barrels of those seventy-five thousand barrels should become contaminated, you deliver seventy-thousand barrels of Pennsylvania grade as Pennsylvania grade and you also deliver the contaminated five thousand barrels of mixture as Pennsylvania grade, is that correct?

Mr. Crawford: I object to so much of the question as speaks of or assuming that five thousand barrels of mixture becomes contaminated, as being quite contrary to the evidence on the point, both

what the witness gave at former sessions and what he has just stated, and I think the question is incompetent for that reason.

Mr. Avis: I have no objection to his stating——

Mr. Crawford: Why don't you say one thousand barrels and come within the limits of the testimony? Why do you want to ex-
338 aggerate and say that, Captain Avis? There is no testimony about five thousand barrels.

Mr. Avis: You are taking all that down, aren't you? I have tried to find out from plaintiff and have called for the quantity of contamination. There is nothing in the evidence to indicate how much contamination there would be in the movement of seventy-five thousand barrels of oil, and the witness has stated that where he speaks of one thousand barrels it is merely an approximation, and has never intimated whether his approximation is too high or too low, and I am justified by the evidence in assuming five thousand barrels as well as I am in assuming one thousand barrels is a contamination mixture. But whatever mixture is, if the witness knows, all I am trying to find out by this last question is, what becomes of the mixture that is so contaminated and what grade is it passed on as.

A. As I stated before, it would hardly be possible——

Q. (Interrupting.) Can't you answer that question, Mr. Kenney, by answering yes or no, and then explain?

A. If there were an unusual contamination reaching the figures which you mention, it is possible that that oil would be delivered as a mixture. With the ordinary tender of shipment covering say seventy-five thousand barrels of Pennsylvania grade oil such
339 as you speak of, we consider that the usual contamination is not that much. It is only the necessary contamination between the columns of oil passing through the pipes, and we would deliver the tender of shipment as seventy-five thousand barrels, being justified in doing so by the regulations contained in our tariffs.

Q. You are familiar with your tariff then, are you, Mr. Kenney?

A. I am familiar with the operation of the tariffs.

Q. And you are familiar with what appears in those tariffs, are you?

A. Yes sir.

Q. Then when it was stated that you knew nothing about the tariffs, that is a mistake is it not?

A. I know nothing about the original making of the tariffs.

Q. But you do know what appears on those tariffs, don't you?

A. I know about the regulations covered by the tariffs.

Q. Then I am back to this question: Has there ever been an instance in the experience of your company where the contaminated mixture was delivered as not being of the same grade as that covered by a tender of shipment?

A. I do not recall that there ever was.

Q. Then we are to understand from your last answer and your last few previous answers that it is here explained that where there is a contamination mixture upon a tender of shipment we
340 will say of seventy-five thousand barrels of oil, that that contaminated mixture, whether it nearest approaches the lowest

grades of oil handled by your company or not, is delivered as that grade covered by the tender of shipment?

A. It is delivered as the grade covered by the tender of shipment, yes sir.

Q. At the Saint Mary's Refinery they use what grade of oil?

A. Pennsylvania grade oil.

Q. Solely?

A. Yes sir, solely.

Q. Suppose I, as an owner should tender to you for shipment to the Saint Mary's Refinery seventy-five thousand barrels or oil of the Pennsylvania grade, and the Saint Mary's Refinery only wanted oil of that grade, and five thousand barrels or a less quantity thereof should become contaminated, and as the result of such contamination should nearest approach Somerset-Cabell or Corning oil, would you still deliver that five thousand barrels to the Saint Mary's Refinery as Pennsylvania grade oil?

Mr. Crawford: I object to that as expressing a state of facts exact-the contrary to what the witness has testified to, and therefore as being an extreme use of the rule of a hypothetical question not based upon the evidence and therefore incompetent.

Mr. Avis: I insist upon my question. I will not abandon
341 the question.

Mr. Crawford: I do not merely refer in making this objection, to the amount of the assumed contamination but to the testimony as to the source of supply for the Saint Mary's Refinery and the operation of the lines generally.

Mr. Avis: If counsel objects to the amount of contamination, and for fear that I may be wrong in my assumption, and there being nothing forthcoming from this witness by which I can know the amount of contamination, I will increase the number of barrels from five thousand barrels to ten thousand barrels, and I may be nearer right.

Mr. Crawford: The objection is repeated.

Mr. Avis: I will ask to have the question repeated.

"Q. Suppose I, as an owner should tender to you for shipment to the Saint Mary's Refinery seventy-five thousand barrels of oil of the Pennsylvania grade, and five thousand barrels or a less quantity thereof should become contaminated, and as the result of such contamination should nearest approach Somerset-Cabell or Corning oil, would you still deliver that five thousand barrels to the Saint Mary's Refinery as Pensylvania grade oil?"

A. A situation of that kind would not or could not be due to the usual contamination between the columns of oil. It would probably have to be due to some accident, and for that reason a
342 question of that kind would have to be decided before I would deliver that oil to the Ohio Valley Refining Company.

Q. You have no objection to answering these questions on any other ground, have you, than that I have assumed too great a quantity of contamination in my question?

A. You have assumed too great a quantity in your contamination.

Q. Suppose that you answered the questions that I propounded to you in regard to the Saint Mary's Refinery, upon the assumption that the contamination amounted to one thousand barrels, which nearest approach the Somerset-Cabell mixture or the Corning mixture, would you in that case deliver one thousand barrels of that contaminated mixture to the Saint Mary's Refinery?

Mr. Crawford: I renew my objection. That question is a hypothetical question not based upon the evidence, and I do not in making this objection, now refer to the quantity of supposed contamination.

A. The usual contamination——

Q. (Interrupting.) Mr. Kenney, that question is not as to the amount of contamination. I am trying to ascertain that in the case I put to you of a shipment of seventy-five thousand barrels of Pennsylvania grade oil to Saint Mary's Refinery, and a part, say one thousand barrels of that grade became contaminated and
343 that contamination resulted in a mixture that nearest approached the Somerset-Cabell, or Corning oil, would you then deliver that contamination mixture to the Saint Mary's Refinery as the Pennsylvania grade oil?

Mr. Crawford: I make the same objection.

A. There is no possible way in which the oil delivered to the Ohio Valley Refining Company can come in contact with Somerset or Cabell grade of oil.

Q. And that is the ground on which you refuse to answer the question as a hypothetical question?

A. We would deliver the oil, the seventy-five thousand barrels of oil, from the oil in our line, which of course is subject to certain contamination.

Q. Then if there should be a combination of a thousand barrels of a certain seventy-five thousand barrels of oil, and that contamination was such that the grade of oil so contaminated would be of a much lower grade than Pennsylvania grade, you would still deliver the contamination mixture as of the Pennsylvania grade, would you?

A. We would deliver the seventy-five thousand barrels of Pennsylvania grade, which would be subject to the contamination.

Q. Which is contaminated, you mean, instead of subject to.

A. Which is contaminated.

Q. Suppose that you are moving two columns of oil
344 through your pipe line system, and in the front part of your lines there would be seventy-five thousand barrels of Pennsylvania grade we will say, and immediately following that in the lines would be seventy-five thousand barrels of Corning oil, and immediately following that would be seventy-five thousand barrels of Somerset-Cabell mixture, and there should be a contamination between the Pennsylvania grade and the Corning, and a contamination between the rear-end of the Corning and the Somerset-Cabell

oil, how would those contaminations be delivered in a case of that kind?

A. The columns of oil if they call for seventy-five thousand barrels or more, would be delivered in that amount, which of course would be subject to the usual contamination you speak of.

Q. Now then, you would take the first seventy-five thousand barrels and whether a part was contaminated or not, deliver it as Pennsylvania grade oil, would you not?

A. If it called for seventy-five thousand barrels of Pennsylvania grade.

Q. That is in my assumption. And the next seventy-five thousand barrels you would deliver as a Corning oil?

A. Yes sir.

Q. And the next seventy-five thousand barrels, being the last seventy-five thousand barrels covered by my question, you would deliver as Somerset-Cabel oil?

345 A. Yes sir.

Q. What did you mean in your examination in chief when you referred to delivering this oil so contaminated to the connecting carrier, and as I understood you to say, some arrangement was made between your company and the connecting carrier but you were not aware what the arrangement was?

A. No sir, I did not mean to convey that impression. I stated that it was delivered as a mixture. By that I mean the usual mixture between columns of oil owing to the contamination that takes place between those columns.

Q. It is not delivered as a mixture, is it?

A. No, it is delivered as the full amount of the tender of shipment.

Q. Then you make no delivery of oil as a mixture?

A. No sir, except that the tariffs under which we work state explicitly that there is a certain mixture due to contamination between the columns of those oils.

Q. Then I want to get it clear on the record, that the delivery to the connecting carrier or to the consignee is not or is any part thereof delivered as a mixture, but is delivered as of the grade that was consigned, isn't that true?

Mr. Crawford: You mean the consignee within the State? Because he has not testified as to any consignee out of the State.

Mr. Avis: I did not say in or out.

346 Mr. Crawford: I object to the question.

Mr. Avis: I will stand on the question.

Mr. Crawford: I object to the question on the ground that the witness has not testified as to any consignees except within the state, and there is nothing to show that he has any knowledge of what takes place with any other consignees.

Mr. Avis: There is nothing to indicate in the question with reference to consignees, that it does not refer to consignees within the state. I ask that the question be repeated.

"Q. Then I want to get it clear on the record that the delivery to the connecting carrier or to the consignee is not or is any part

thereof delivered as a mixture, but is delivered as of the grade that was consigned, isn't that true?"

A. Yes, sir, it is delivered as the grade consigned.

Q. What becomes of the oil that goes through your lines north or northeast of Morgantown and is delivered to the Southern Pipe Line Company?

Mr. Crawford: If this witness knows. We are going to put on other witnesses who will go into that in detail.

A. The oil we deliver our connecting carrier northeast of Morgantown at the State line, the Southern Pipe Line Company, is
347 carried through their system I presume in accordance with the tenders of shipment covering the same.

Q. And goes to what point?

A. To any point which the tender of shipment may call for.

Q. Don't the tenders of shipment all call for the same point?

A. No, sir, they do not.

Q. On yesterday when you testified you were able to tell counsel for the plaintiff when asked what became of oil that was delivered to the Pure Oil Company, you stated how it was pumped and its journey and it finally landed at Marcus Hook, Pennsylvania. How do you happen to be better acquainted with what was done with the oil delivered to the Pure Oil Company than what is done with the oil that is delivered to the Southern Pipe Line Company?

A. I am only acquainted with such matters through the public tariffs under which we work, and those tariffs state to what point on the Atlantic seacoast that oil may be carried to.

Q. Is all of the oil that is delivered to the Pure Oil Company carried to Marcus Hook, Pennsylvania?

A. All the oil that we deliver to their tank at Morgantown is consigned I think solely to Marcus Hook.

Q. What is your best recollection as to the place of consignment and the persons to whom consigned of the oil that you deliver
348 to the Southern Pipe Line Company northeast of Morgantown?

A. We deliver oil to the Southern Pipe Line Company at the State line, our connecting carrier, to points covered by the public tariffs such as Baltimore, Philadelphia, Bayonne, New Jersey, Bay Way, same state, I believe, and Claremont.

Q. And to whom is that oil consigned?

A. It may be consigned to any person or corporation, I presume, at those points who have the proper terminals.

Q. That is not the question. The question is to whom that oil is consigned or the greater quantity of it at those various points you have named.

Mr. Crawford: I object to the question as immaterial and irrelevant to the issues in this case, and I ask that in order to save time my objection be understood as applying without repetition to all this line of questions.

Mr. Avis: That is all right.

A. The oil consigned to Baltimore, I believe, is for the Standard Oil Company of New Jersey. Also the oil consigned to Bayonne and Bay Way is for the same corporation. The oil consigned to Philadelphia is for the Atlantic Refining Company.

Q. Does that cover all the places you named that oil went to from your line?

A. I believe I omitted or failed to mention Bramel Point, which is in New Jersey, I believe, speaking without records, and
349 that oil is consigned to the Vacuum Oil Company.

Q. Have you any idea as to the total amount delivered by you to the Southern Pipe Line Company which goes to these respective corporations or concerns that you have mentioned?

A. I have no data that would show the amount.

Q. Have you from your experience as assistant superintendent of the company during the year ending June 30th, 1919, any idea as to which of those corporations receives the most of that oil, or those concerns?

A. The Standard Oil Company of New Jersey receives I believe a greater amount of the oil.

Q. Have you any idea as to what percentage of oil delivered by you to the Southern Pipe Line Company is received by the Standard Oil Company of New Jersey?

A. Without having the data at hand I could not answer that question.

Q. In your re-direct examination on yesterday you made reference to traffic conditions and explained what you meant by traffic regulations, and as I recall your answer to counsel representing the plaintiff, you made no reference to any traffic regulations issued by the United States Government or by any state. Am I correct in that understanding?

A. The traffic regulations that I mentioned were the natural regulations due to the handling of our oil, subject of course to the tender of shipments covering the oil which we handle.

350 Q. Those regulations are not reduced to writing, are they?

A. No, it is a natural traffic condition we meet to move forward the various kinds of oil.

Q. And those regulations are also elastic? You change them to suit your convenience sometimes, do you not?

A. Such regulations might be changed.

Q. And they are frequently, are they not? You do not adopt any hard and fast rules for the handling of oil?

A. No, the emergency controls the matter.

Q. That is the emergency of your company?

A. No, sir, the traffic emergency.

Q. That is the traffic emergency of your company?

A. Yes, sir.

Q. May I have your attention to this map, Plaintiff's Exhibit 3, Third Map. I believe that you stated that your lines were constructed to the Kentucky-West Virginia State line prior to the time that the lines of the Cumberland Pipe Line Company were constructed to that line; is not that true?

A. Yes, sir, I think that is correct.

Q. Which lines were constructed first to the Ohio-West Virginia State Line, the pipe lines of The Eureka Pipe Line Company or those of the Buckeye Pipe Line Company?

A. I think the first lines touching that portion of West Virginia adjoining the Ohio River were constructed by the Buckeye
351 Pipe Line Company years ago.

Q. Well, when their lines were first constructed did they extend over into West Virginia?

A. The lines were controlled and operated by the Buckeye Pipe Line Company, and I judge they were handled separately on their books, as compared with the Buckeye Pipe Line Company lines, although I have no knowledge on that question.

Q. But did they extend over in West Virginia; in other words, did lines of some company extend into the State of West Virginia at that time, which have been subsequently acquired by The Eureka Pipe Line Company?

Mr. Crawford: Pardon me, will you not specify the time?

Mr. Avis: The time that the witness refers to; I put it in a previous question.

Mr. Crawford: It is a long ways back, that is all.

Mr. Avis: Yes.

A. Years ago, when the Buckeye Pipe Line Company constructed those lines, which I think they did——

Q. You mean in West Virginia?

A. They crossed the Ohio line into West Virginia, and the extension continued on across the West Virginia line into that State.

Q. Those lines that extended into West Virginia are now
352 the lines of your company?

A. Yes, sir.

Q. Do you know how your company acquired title or ownership of those lines?

A. I could not answer that question.

Q. Or whether they paid for them or not?

A. No, I could not answer that.

Q. Now let me further have your attention to the map, Exhibit 3. At the time that you first went with The Eureka Pipe Line Company were the lines of the South West Pennsylvania Pipe Lines which lead from Ewings to the Pennsylvania-West Virginia State boundary line constructed?

A. I believe there was one small line at that time.

Q. Did that line extend into the State of West Virginia?

A. I do not think it did. I do not recall the terminal or terminus of that line.

Q. There is nothing on this map to show any terminus of any line of that company at the Pennsylvania-West Virginia State boundary line, is there?

A. The State line is the terminus of those lines at present.

Q. At present, but at that time you do not know where the

terminus of the line of the South West Pennsylvania Pipe Lines was?

353 A. No, I can't recall.

Q. Well, at that time was there any connection or any line running from the West Virginia-Pennsylvania State boundary line to Morgantown, which was not owned by your company?

A. What time do you speak of?

(Question read: "At the time that you first went with The Eureka Pipe Line Company * * *")

Q. Answer that as to the time you first went with The Eureka Pipe Line Company?

A. At the time that I first became connected with The Eureka Pipe Line Company there was a line extending from Mt. Morris on the State line to Morgantown, from that point through West Virginia into Morgantown.

Q. Did that line also extend beyond and northeast of Morgantown, over the territory covered by your present seven lines leading from Morgantown to the West Virginia-Pennsylvania State line?

A. No sir, not at that time.

Q. Were there any lines at that time that went beyond Morgantown, northeast, to the Pennsylvania-West Virginia State line?

A. No sir.

Q. Who first constructed the lines which meet at the Pennsylvania-West Virginia State line, referring to your lines and

354 the lines of the Southern Pipe Line Company; you or the Southern Pipe Line Company?

A. The lines or some portion of them, I believe, were constructed, or construction work was started, prior to the beginning of The Eureka Pipe Line Company.

Q. That is, from Morgantown northeast to the Pennsylvania-West Virginia State line?

A. Yes sir.

Q. Do you know to whom those lines belonged at that time?

A. No sir, I do not.

Q. Did they belong to the South West Pennsylvania Pipe Lines?

A. I could not say.

Q. Do you know when the lines of the Southern Pipe Line Company were constructed?

A. They were constructed, I believe, speaking from memory, commencing sometime early in 1890. I do not think it started in the latter part of 1899, I think it was started in 1890—and finally completed within, I would say, a year, 1891.

Q. That was prior to the organization of The Eureka Pipe Line Company, the commencement of the construction of those lines?

A. I think it was prior to the beginning of The Eureka

355 Pipe Line Company.

Q. You do not know who constructed the lines leading from Morgantown northeast to the Pennsylvania-West Virginia boundary line?

A. No sir.

Q. And you do not know who constructed the lines leading from Ewings to Morgantown prior to that time?

A. The South West Pennsylvania Pipe Lines constructed that portion in Pennsylvania, but I cannot say if they also constructed that portion of it extending into West Virginia.

Q. There then was, at the time of the organization of The Eureka Pipe Line Company, a line substantially covering the territory now covered by your lines and those of the South West Pennsylvania Pipe Lines, leading from Ewings to Morgantown and from Morgantown northeast to the Pennsylvania-West Virginia State boundary line?

A. I believe that system of lines that you speak of was constructed prior to the incorporation of The Eureka Pipe Line Company, or part of those lines at least were constructed.

Q. You do not know how The Eureka Pipe Line Company got title to that part of its present line which was constructed prior to its organization, as you have stated, which leads from the Pennsylvania-West Virginia State boundary line to Morgantown, and from
356 Morgantown northeast to the Pennsylvania-West Virginia State boundary line, do you?

A. I have no direct information on that subject, but suppose they purchased those lines.

Q. You do not know, do you?

A. I do not know.

Q. You spoke yesterday of the fact that your company pumped the oil which went through its seven lines northeast to connect with the lines of the Southern Pipe Line Company, as far as Watson on the lines of the Southern Pipe Line Company, a distance I believe you stated, of—was it twenty-one or twenty-two miles?

A. We deliver the oil at the State line, but the pump force to put that oil is to Watson Station, yes sir.

Q. A distance of about how many miles, did you say?

A. About thirty-two miles, I think it is.

Mr. Crawford: Thirty two miles from where?

Q. From Morgantown?

A. From Morgantown to Watson Station.

Q. Now, how far is it from Morgantown over your lines to the Pennsylvania-West Virginia State line at the point of connection?

A. About twelve miles and a half.

Q. Do you know whether there is any arrangement as to
357 the division of the cost of that pumping over that distance of thirty-two miles or not?

A. No, I have no definite knowledge on that subject.

Q. Do you know or have you any idea what it cost your company, during the year ending June 30th, 1919, to pump the oil which travelled through your seven lines from Morgantown to Watson?

A. No sir, my duties do not embrace the matter of the cost of pumping our oils.

Q. Well, do you know, as assistant superintendent of The Eureka

Pipe Line Company, whether that cost is small or large, so as to be able to give us some idea of the cost?

A. I have no definite knowledge on the matter, and any answer I might make would be a mere approximation.

Q. Well, you can answer whether it is a great or small amount, can you not?

Mr. Crawford: I object now, in view of the witness' statement, which shows that he knows nothing about the subject.

Mr. Avis: He says he knows nothing definite.

Mr. Crawford: There is nothing to show that his duties comprise any such knowledge, or that he has anything to do with that branch of the business. The fact that he is an assistant superin-
358 tendent does not qualify him.

Mr. Avis: I will ask counsel if he will produce a witness who can answer that question?

Mr. Crawford: Undoubtedly.

Mr. Avis: All right, I will abandon asking this witness. And you will also produce a witness who will give us some idea of the cost of pumping from Ewings to Morgantown over the lines of the South West Pennsylvania Pipe Lines?

Mr. Crawford: If it can be done. I assume it can be done. I shall produce witnesses who have charge of that branch of the business.

Mr. Avis: Very well, sir.

Mr. Crawford: I assume that they know.

Q. I want to ask you one question, what is the distance, or what is the length of the pipe lines shown on this map, Plaintiff's Exhibit 3, Third Map, from Ewings to Morgantown?

A. The distance between Ewings, Pennsylvania, and Morgantown, West Virginia, is about forty-nine miles and a half.

Q. And how far is it over your lines from the Pennsylvania-West Virginia State boundary line to Morgantown?

A. It is about, approximately twelve miles from Morgantown to the Pennsylvania-State line.

Q. Where do you keep your office, Mr. Kenney?

359 A. My office is at 424 Sixth Avenue, Pittsburgh.

Q. Do you hold any official connection with any other company?

A. No sir, I do not.

Q. Other than The Eureka Pipe Line Company?

A. No sir, I do not.

Q. What are your activities, other than having charge of the movement of oil in the State of West Virginia?

A. That is my entire duty.

Q. Do you attend to it personally, or through some others?

A. Yes sir, with some assistants.

Q. Where you have your offices does the Standard Oil Company of New Jersey have any offices at the same place?

Mr. Crawford: What do you mean by the same place?

Mr. Avis: He named the building and the city.
Mr. Crawford: You mean the same building, or in the same city?
Mr. Avis: In the same building and the same city.

A. I know of no Standard Oil Company of New Jersey office in the building in which I am located.
Q. Has the South Penn. Oil Company an office there?
A. Yes sir.
Q. Do those offices connect with yours?
A. No sir.
360 Q. They are not adjoining offices?
A. No sir, not in any sense. There has been offices that are separated from their main system of offices, on other floors, but that is simply due to lack of room in the building.
Q. When you speak of your offices, do you mean the office of The Eureka Pipe Line Company?
A. Yes sir.
Q. That happen to be in there?
A. Yes sir.
Q. Do any of the other officials of your company maintain offices in that same building?
A. Yes sir.
Q. What, which ones?
A. Mr. Allan T. Towl.
Q. What is his official connection with the company, to get it in the record?
A. General Manager. He maintains room space in an office in that building.
Q. Connecting with yours?
A. No.
Q. Or connecting with rooms that connect with yours?
A. No sir. It is on a different floor.
Q. Well, do any of the offices occupied by any of the officials or employees of The Eureka Pipe Line Company connect with
361 any of the offices occupied or used by the South Penn Oil Company?
A. The South Penn Oil Company has a room that adjoins the room that I am in. The door connecting these rooms is always locked.
Q. What about the other offices of your company that connect with those of the South Penn Oil Company?
A. I believe the same condition prevails where there is or may be any other similar situation.
Q. Does the Joseph Seep Purchasing Agency have an office there in that same building?
A. They do; he does, rather.
Q. The Hope Natural Gas Company?
A. Yes sir.
Q. Do those offices of these other concerns connect with yours, or connect with the other offices that connect with yours?
A. I do not think so. The Joseph Seep office is on the second floor of that building, and ours are on the ninth or beyond that.

Q. Do your activities as assistant superintendent require you to have business dealings with the pipe line companies that connect with your pipe lines?

A. I have no business dealings with our connecting car-
362 riers, other than the daily reports interchanged between us, showing the amounts of oil delivered by them to us on tenders of shipment for each day.

Q. None of the officials or any employees of those connecting carriers consult you, nor do you consult with any of them, before you receive or deliver any oils through your pipe lines?

A. No sir, I do not.

Q. You deliver no oil whatever to the Cumberland Pipe Line Company nor the Buckeye Pipe Line Company for shipment, do you?

A. We deliver no oil to the Cumberland Pipe Line Company except a small amount of oil mentioned as being produced in Wayne County, West Virginia.

Q. Now, what about the Buckeye?

A. We deliver no oil at any point whatever to the Buckeye Pipe Line Company.

Q. You deliver a very small quantity of oil to the South West Pennsylvania Pipe Lines, do you not?

A. Yes sir, we deliver some oil to the South West Pennsylvania Pipe Lines.

Q. But it is a very small quantity, and was a very small quantity during the year ending June 30th, 1919?

A. It varies. At times it is greater than at other times.

Q. Well, about how much during the year ending June
363 30th, 1919, would you say?

A. There are months when——

Mr. Crawford: No, Mr. Kenney, answer that question. Counsel is asking you a perfectly proper question, about the twelve months ending June 30th. Now answer it with reference to those twelve months. It will save a great deal of time. Just read the question, Mr. Stenographer.

(Question was read.)

A. I would have to approximate that amount, but I would state probably four or five hundred thousand barrels.

Q. And how much oil did you receive from them for transportation during the same period, approximately?

A. We received approximately seven or eight hundred thousand barrels of Mid-Continent oil from the South West Pennsylvania Pipe Lines, and a very small amount of Pennsylvania grade oil also.

Q. The oil that you delivered to them was entirely Pennsylvania grade oil, was it not?

Mr. White: For what period?

Mr. Avis: In this same period, during the same period.

Mr. White: Did you mean a year or a month, in your answer?

The Witness: I meant a year.

Mr. Crawford: He did not say.

364 Mr. Avis: I said in my question, the same year, and then I repeated it again.

Q. The oil that you delivered to them during the same period was entirely Pennsylvania grade oil, was it not?

Mr. Crawford: If you will let me ask a question, Captain—I will not ask it without your permission—it will save you trouble and misunderstanding. I think the witness has made a palpable error, which will be shown when we put the figures in. If you will permit me to do so, I will ask him?

Mr. Avis: Absolutely, Mr. Crawford. I will tell you where I am handicapped, and if you can help me out—I do not like to ask questions of you—I believe we could save a lot of time if I knew what witnesses you were going to put on and what testimony they would cover.

Mr. Crawford: I will call Mr. Swisher, and he will put in all the figures, and what he does not put in you can get out of him, doubtless. He is the man who knows the figures and keeps records and so forth.

What I wish to ask Mr. Kenney is whether he has not made a very serious error in saying that the company receives only seven or eight hundred thousand barrels of Mid-Continent, or whether he does not mean seven or eight millions?

365 The Witness: I do mean seven or eight millions. I figured the matter in my head; because I have already stated that we received from twenty to twenty-two thousand barrels every day.

Mr. Crawford: The amount is, as I understand, and as we shall show, or was during that period, from seven to eight millions of Mid-Continent.

Mr. Avis: That is all right, sir.

By Mr. Avis:

Q. Right in that connection, I do not know whether it appears in the record or not, but I want to ask you, Mr. Kenney, if the Mid-Continent oil, at any time while it is handled by you, becomes contaminated by any other oil?

A. No sir, it does not.

Q. It is kept entirely separate and apart from all other oils, this seven or eight million barrels?

A. In The Eureka Pipe line Company, yes sir.

Q. That is the only oil that you handle that does not become contaminated in its transportation, to a certain extent?

A. No sir, there is other oil that does not so become contaminated.

Q. But no other grade of oil? Your Corning oil that you handle becomes contaminated at times, at least, does it not?

A. It only becomes contaminated while handling it in
366 columns through to Morgantown.

Q. I understand; and that is also true of your Pennsylvania grade and your Somerset?

A. It is not true of Pennsylvania grade, with the exception of the amount produced in Lincoln County.

Q. Did I understand you to say that your Corning oil travelled in pipes that none of the Pennsylvania grade travels in?

A. I wish to make a correction, with the exception of the oil produced in Lincoln County, and some oil handled between Eureka and Morgantown; some Pennsylvania oil handled between Eureka and Braden, I should say.

Q. Well, at some point in your line your Pennsylvania grade oil becomes contaminated with some of the other oils that you mentioned, does it not, in moving it in columns?

A. Only in moving it from Hamlin to Elm Run, and in moving the Corning oil from Eureka to Braden Station.

Q. You do not mean to confine your contamination of your Pennsylvania grade oil to such Pennsylvania grade oil that comes from Lincoln County, do you?

Mr. Crawford: He has not testified that way.

Mr. Avis: I am trying to see if I understand him aright.

Mr. Crawford: He specified another case. He said that
367 was one.

Mr. Avis: He did not say it was one. It is not a catch question; it is trying to help the witness.

Mr. Crawford: All right, go on.

Mr. Avis: I am trying to get information.

A. It is, with the exception of the Pennsylvania grade oil handled between Eureka and Braden Station.

Q. Your Pennsylvania grade oil that is handled between—you say between Eureka and Braden Station?

A. Yes sir.

Q. Well, what about the oil that is produced in Kanawha County; do columns of that oil come in contact with columns of Somerset-Cabell oil?

A. No sir.

Q. Is that carried in a separate line?

A. That is carried in a separate line through to Morgantown.

Q. Through to Morgantown, and no other grade of oil comes in contact with it?

A. No sir.

Q. Now, between Elm Run and Braden, what oils come in contact in the handling of columns?

A. There are no oils come in contact between Elm Run and Braden. We use two lines, or two pipes for Somerset oil,
368 continuously.

Q. Corning oil never goes in those lines?

A. Corning oil, no sir.

Q. Well, all your Corning oil goes to Braden, does it, except what goes to Littleton?

A. Corning oil all goes from Eureka to Braden.

Q. From Braden to Downs that Corning oil is carried in pipes that carry which oil?

A. Somerset and Cabell oil.

Q. And from Elm Run to Morgantown do you keep a separate line for the handling of Pennsylvania grade oil?

A. Yes sir.

Q. Solely?

A. Solely.

Q. And no other oil comes in contact with that then?

A. No sir.

Mr. Avis: Now I want to call for some information, if you please, gentlemen. I want to call for and request of plaintiff, a statement or a witness or the name of a witness who is an employee of the company, from whom can be ascertained the quantity of oil stored within the State of West Virginia by owners during the year ended June 30th, 1919, on which storage charges were paid, and also the amount of revenue therefrom during that period; and I
369 want also the average daily storage of oil by owners which is unconsigned during the same periods and times.

In addition to the above I desire to know the total quantities of the several grades of oil handled by the company during the year ended June 30th, 1919.

Mr. Crawford: The request is noted. We have no further questions of the witness.

Mr. Avis: I thought we might make a reservation that, if after going over the testimony we find anything is omitted and we would like to recall the witness for further questions, we reserve the right to do so. I do not know of anything.

Mr. Crawford: I do not like to make any general reservations of that sort, no sir. This witness has his duties to perform. We cannot keep him here indefinitely for that. He is here; if you want to ask him further questions, he is here. I do not want to be unreasonable about it, but I do not think——

Mr. Avis: I understand, sir; but I want to make it, and if I have the right to, I want to insist on it, and if I have not, why——

Mr. Crawford: I do not think you have any right to tell us to recall him. He is at your service. If you want to call him
370 he is at your service at any time.

Mr. Swisher.

VERNON S. SWISHER, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination.

By Mr. Crawford:

Q. Mr. Swisher, what is your name?

A. Vernon S. Swisher.

Q. Where do you live, Mr. Swisher?

A. Oil City, Pennsylvania.

Q. Are you in the employ of The Eureka Pipe Line Company?
A. Yes sir.
Q. Have you any title?
A. Yes sir.
Q. What is it?
A. General Shipping Agent.
Q. What duties do you perform for The Eureka Pipe Line Company?
A. Our department keeps the general oil books of The Eureka Pipe Line Company, showing a record of all oil received by The Eureka Pipe Line Company, for whose credit it is received, and the deliveries out by The Eureka Pipe Line Company, and to whose account they are charged, and on what tenders of shipment?

371 Q. Did you perform those duties during the twelve months ended June 30th, 1919?
A. Yes sir.
Q. I do not assume that you personally did all the clerical work, but you had general charge of the keeping of the records at that time?
A. Yes sir, general charge of the records.
Q. And you know that the records as so kept were correct, do you?
A. Yes sir.
Q. I hand you two sheets of paper, and ask you to state whether you have seen them before?
A. Yes sir.
Q. By whom were they prepared?
A. I prepared them.
Q. From your books and data in your office?
A. Yes sir.
Q. And did you know that they were correct at the time they were prepared?
A. I did.
Q. What period do the figures and other information on those sheets cover?
A. They cover the deliveries of crude oil made by The Eureka Pipe Line Company from July 1st, 1918 to June 30th, 1919, inclusive.

372 Q. In addition to the figures representing barrels, there are also figures under the column entitled "rate." Before stating what any of these figures are, will you state just generally what the word "rate" means and what the figures refer to?
A. The rate. "Gath." means gathering, the twenty cent rate. That means the Eureka's gathering charge, and the gathering rate on all the oil delivered. The other rates are proportions of the through rate on tenders going through in the course of transportation.
Q. Are they the proportion which The Eureka Pipe Line Company receives of the through rates?
A. Yes, sir.
Q. For its work?

A. For its work.

Q. In pumping through its system these particular oils?

A. Yes sir.

Q. And the last column, under the head of "amount," I suppose is——

A. The amount of money in the third column represents the earnings of The Eureka Pipe Line Company against those amounts in barrels handled.

373 Q. Well, in each case the item in the third column is the product of the amount of barrels in the first column, multiplied by the money item under the column headed "rate?"

A. Yes sir.

Q. And when you say, those are the earnings, I suppose you mean the gross earnings?

A. The gross earnings on those shipments, the gross earnings, yes sir.

Q. About half way down the page, under the second column appear such words as "Buckeye," "Prairie," and "So. West." What are those?

A. Those signify the names of the originating lines where the tenders are issued.

Q. Without going into detail about that, what does "Buckeye" mean?

A. "Buckeye" means the Buckeye Pipe Line Company.

Q. And "Prairie?"

A. The Prairie Pipe Line Company.

Q. And "So. West?"

A. So. West means the South West Pennsylvania Pipe Lines.

Q. And "Cumberland?"

A. Cumberland Pipe Line Company, Incorporated.

Q. Now, in the next column, there are a number of figures preceded by the letters "I. C. C." State generally what they are.

374 A. That is Interstate Commerce Commission tariff, I. C. C. tariff, and the figures mean the number of that tariff that is on file.

Q. And is that in each case the tariff under which the particular quantity of oil was transported?

A. Yes sir.

Mr. Crawford: I offer it in evidence, and request that for convenience it be spread upon the record. Is there any objection?

Mr. Avis: I will just simply reserve the right to object later on. I have not had a chance to see whether there is any objection to it or not.

Mr. Crawford: Well, do you object?

Mr. Avis: I do not object to it at this time.

Mr. Crawford: You do not object to it on the ground that we do not produce the original books?

Mr. Avis: Oh, no, no. The objection if made, will go entirely to the relevancy of the testimony.

Mr. Crawford, I am going to have the record show that I do object

to the materiality of this exhibit, but not to the fact that the data is taken from the books and that the original books and papers are not produced.

Mr. Crawford: You mean you do object to it on that ground, or not on that ground?

Mr. Avis: Not on the last ground, simply on——

375 Mr. Crawford: You object to it on the ground that it is not material?

Mr. Avis: Yes, sir, and incompetent, that is all, in substance. I do not object, Mr. Crawford, on the ground that the original books are not produced or that it is data taken from the books.

The two sheets were received in evidence and marked Plaintiff's Exhibit 4, Sheet 1 and Sheet 2.

376 By Mr. Crawford:

Q. Referring, Mr. Swisher, to Plaintiff's Exhibit 4, Sheet 1, take up the first table at the top of the page; what does that show? You read the tabulation in; start with the left hand side of the page and read across.

A. "Oil produced in West Virginia and delivered to points in West Virginia for use in West Virginia."

Q. What follows, in the six lines following, includes all the oil which comes under that category and is handled by your company?

A. Yes sir.

Q. At least, that was so handled during the twelve months in question?

A. Yes sir.

Q. The amount delivered to the Standard Oil Company, that is the Standard Oil Company of New Jersey, I suppose?

A. Yes sir.

Q. At Parkersburg, West Virginia, was how much?

377 A. 802,164.22.

Q. What?

A. Barrels.

Mr. Avis: Mr. Crawford, do you mind developing at that point, barrels of how many gallons?

Mr. Crawford: Certainly not.

Q. These barrels are of what size?

A. Forty-two gallons each.

Q. That is the standard barrel of crude oil, is it not?

A. Yes sir.

Q. And how much was delivered to the Ohio Valley Refining Company at St. Marys?

A. 179,737.77 barrels.

Q. And how many to the Elk Refining Company at Falling Rock?

A. 257,148.19 barrels.

Q. And to the three concerns mentioned at Downs, West Virginia, how much was delivered in all?

A. 49.37 barrels.

Q. What was the total of the number of barrels delivered during that year, which had been produced in West Virginia, and which were delivered to points in West Virginia for use there?

A. 1,239,099.55 barrels.

378 Q. Now will you take up the next item?

A. "Oil produced in West Virginia and delivered to other carriers in West Virginia, for interstate transportation."

Q. The first name mentioned is the Pure Oil Company?

A. Pure Oil Company, Morgantown, West Virginia, we delivered 506,779.12 barrels.

Q. What do you mean by saying that it was delivered for interstate transportation?

A. We understand that all the oil we deliver at the Pure Oil Company into their tanks goes outside of the State.

Q. Well, was this oil here delivered under tenders or tariffs?

A. It was delivered on a local tariff, and the Pure Oil Company buy so much oil and tell us to deliver to their tanks at Morgantown. That is all we know about it definitely.

Q. The next item there is the West Virginia Pipe Line Company at Littleton?

A. At Littleton. We delivered them 131,811.67 barrels.

Q. Do you know what they did with the oil, or what became of that oil, rather, which you delivered to them?

A. The order which they gave was to deliver into their tanks at Littleton so much oil. We assume that it goes to Pennsylvania.

Q. Never mind what you assume; you do not know what

379 becomes of it.

A. No sir.

Q. You do not know what becomes of it?

A. We do not know, no.

Q. In this group what was the total?

A. 638,590.79 barrels.

Q. What is the next group?

A. "Oil produced in West Virginia and delivered at Pennsylvania State line to other carriers for further transportation outside the State of West Virginia." The first item, to South West Pennsylvania Pipe Lines, 722,704.79 barrels. The next, to Southern Pipe Line Company, 3,646,013.62 barrels. That makes a total of 4,368,718.41 barrels.

Q. The amount of 4,368,718.41 is the total of the deliveries of oil produced in West Virginia and delivered at the Pennsylvania State line to the South West Pennsylvania Pipe Lines, and the Southern Pipe Line Company? That is correct, is it not?

A. That is correct, yes sir.

Q. Now, what is the total of that amount and of the other two totals which you have given? What is the summation of the three totals?

A. The grand total of those three is 6,246,408.75 barrels.

Q. And that is all oil produced within the State of West Virginia, is it?

380 A. Yes sir.

Mr. Avis: For that period?
Mr. Crawford: I mean during the period covered in the question.
Mr. White: Produced and transported.
The Witness: Produced and transported.

Q. I mean, which was produced, transported and delivered?
A. During that period: delivered during that period.
Q. Which was delivered during that period?
A. Yes sir.
Q. That is, you cannot say certainly whether it was produced during that period, or not?
A. No, it overlaps.
Q. That represents, all of it, oil produced in West Virginia at some time and delivered by you during those twelve months?
A. Yes sir.
Q. In the manner which you have testified to?
A. Yes sir.
Q. Down at the bottom of the page, there are two other items of oil produced in West Virginia. Will you explain those?
A. That oil was produced and tendered from Cabin Creek, West Virginia, for Marcus Hook and Philadelphia. There was no gathering rate that the Eureka had on that oil; that is, the rates
381 represent their proportion of the through rate from Cabin Creek to the points named.
Q. I notice the words here, in parenthesis, "but not run by The Eureka Pipe Line Company." What do those words mean?
A. When we say "run," it is oil produced by The Eureka Pipe Line Company, we consider run from wells, that means produced by The Eureka Pipe Line Company. I mean to say, that this was not run; it is just like a receipt from another line.
Q. You mean produced or gathered?
A. Gathered, I should have said, I guess; "gathered" would have been a better name.
Q. The Eureka Pipe Line Company does not produce oil, does it?
A. No, surely not.
Q. It gathers oil, does it not?
A. It gathers oil, yes sir.
Q. And what you meant to say is this particular oil in these two items was not gathered by your company?
A. That would be better, yes sir.
Q. And that therefore there was no gathering charge upon it?
A. Yes sir, that is it exactly.
Q. And that it was received by you and shipped as stated here, under I. C. C. Tariff, to the points named?
382 A. Yes sir.
Q. To what carrier was the oil which is included as being for Marcus Hook delivered?
A. That was delivered at Morgantown to the Pure Oil Pipe Line Company.
Q. You say it was delivered; was it delivered on a tariff?
A. Delivered on a tariff, on the Eureka tariff. The first amount

was delivered on the Eureka tariff, I. C. C. 158; the second, to Philadelphia, on Eureka tariff I. C. C. 149.

Q. Well now, what were the amounts of those two deliveries?

A. 269,170.27 barrels.

Q. That is the total of the shipment?

A. That is the total of the two.

Q. Will you add that to the total which you gave me a short time ago, of the other amounts of oil produced in West Virginia, which were set forth on this table?

A. The total of those two amounts is 6,515,579.02.

Q. Barrels?

A. Barrels.

Q. That last amount comprises all of the oil produced in West Virginia which was delivered by your company during the twelve months in question?

A. Yes sir.

Q. Whether delivered at points within the State for use
383 within the State, or delivered at the State line or elsewhere for transportation out of the State?

A. Yes sir.

Mr. Avis: Mr. Crawford, you have used the word "delivered." I assume that means to include transporting, transported and delivered?

Mr. Crawford: Yes.

Q. Now the larger table in the middle of sheet 1 of this Exhibit 4, which is headed "oil produced outside West Virginia and delivered to other carriers on I. C. C. tariffs," refers to oil not produced within West Virginia, does it not?

A. Yes sir.

Q. How many different grades are included in this table, as transported and delivered by you during the twelve months in question?

A. That includes Pennsylvania grade, Corning oil, Somerset oil and Mid-Continent oil.

Q. Very well. Taking first the Mid-Continent oil, from what carrier was that received by your company?

A. From the South West Pennsylvania Pipe Lines.

Q. Possibly I was not quite clear and have not made my questions quite clear. This list of names, the pipe lines in the second column in the middle of the page, sheet 1 of this Exhibit 4, is that a list of the initial carriers of the various shipments, or of the
384 carriers which delivered the shipments to you?

A. No, that is the list of the initial carriers.

Q. Very well. Then I will change my question and ask you by what initial carriers, as indicated in this list, was the Mid-Continent oil started on its journey?

A. The Prairie Pipe Line Company.

Q. And are the various items on this table, of barrels, opposite the word "Prairie" wherever it occurs, all shipments of oil which were initiated by the Prairie Pipe Line Company?

A. Yes sir.

Q. And what kind of oil was it, if it was any one kind?

A. It was all Mid-Continent oil.

Q. And then if you add together the various amounts which are shown on this table opposite the word "Prairie" is it true that you have the total amount of Mid-Continent oil which was received in your lines and transported and delivered out of your lines during the twelve months in question?

A. Yes sir.

Q. Will you please add together those various amounts and tell us the result?

A. I have the amount right here.

Q. Very well, what was the total amount that you received of Mid-Continent crude, and transported and delivered during
385 those twelve months?

A. 8,010,289.56 barrels.

Mr. Crawford: I understood it was between seven and eight million. It appears to have been slightly over eight million, but of course I intended to be accurate.

Mr. Avis: That is all right, sir.

Q. In like manner, by which of these pipe line companies mentioned in this second column were the shipments of Somerset oil initiated?

A. The Cumberland Pipe Line Company, incorporated.

Q. Now the word "Cumberland" appears but once, and opposite that in the barrel column, is the amount 4,690,838.14. Does that represent the total amount of Somerset oil that your company received, transported and delivered during those twelve months?

A. It does.

Q. Does that include any Cabell oil?

A. No sir.

Q. Where is the Cabell oil?

A. Cabell oil would not be in that list. This is oil produced outside of the State of West Virginia.

Q. I see. Well, is the Cabell oil anywhere shown on this sheet?

A. Not on that page.

386 Q. Not on that page?

A. It is not on that page.

Q. Not included in any of the totals on this page?

A. It would be included up in one of the totals as delivered to the Southern Pipe Line Company under our gathering rate.

Q. Well, is it? Are we to understand that it is included in the total of the amount delivered to the Southern Pipe Line Company?

A. Yes sir.

Q. Well, have you any separate statement as to the amount of Cabell oil which was produced and transported and delivered by your company during those twelve months?

A. Yes sir.

Q. How much?

A. It would be—it does not show on the statement, but I can tell you how much it is.

Q. Well, tell us how much.

A. It is 7,496.60 barrels.

Q. If, then, that is included in the item of 3,646,013.62 barrels which is opposite the words "Southern Pipe Line Company," then if you deduct the amount you have given for the Cabell oil from the total which you gave me some time since for oil produced in West Virginia, you would have the correct figures for the
387 total of Pennsylvania grade oil produced in West Virginia?

A. Yes sir, the difference would be Pennsylvania grade.

Q. Well now, can you do that, so as to give us the correct figures for the total of Pennsylvania grade produced in West Virginia? I want you to separate the amount of Cabell oil from the six million odd, which represented the total amount produced in West Virginia.

A. That would leave a total for the Pennsylvania grade of 6,238,912.15 barrels.

Q. That is all produced in West Virginia?

A. Yes sir.

Q. And is all what is produced in West Virginia, which you delivered during those twelve months?

A. Yes sir.

Q. And does that include, to make sure, this item at the bottom of the page, 269,170.27?

A. No sir.

Q. It does not include that?

A. No. That includes just the oil which is gathered by The Eureka Pipe Line Company.

Q. Well now then, if it did not include that will you not add this in and give us another total, so that we may have a figure which represents the entire amount of Pennsylvania crude produced in West Virginia and transported and delivered by your
388 company, whether gathered by your company or not?

A. 6,508,082.42 barrels.

Recess.

389 Afternoon Session.

Mr. Avis: I desire to call for a statement showing the quantity of oil contaminated (in the sense used by the witness, Mr. Kenney) during the year ending June 30, 1919.

VERNON S. SWISHER resumed the stand:

Direct examination.

Continued by Mr. Crawford:

Q. In order to be sure that I understand you, I ask you whether you can testify that the total of all Pennsylvania grade crude which was produced in West Virginia and which was transported and delivered by you during the twelve months ending June 30, 1919,

wheresoever and to whomsoever delivered, amounted to 6,508,082.42 barrels?

A. Yes, sir.

Q. In several of my questions this morning my attention has been called to the fact that I spoke of oil which has been received, transported and delivered, and I am advised by my colleagues that owing to the length of time that oil takes to pass through the lines, there might be a certain overlapping; in other words, it might be true that oil received during those twelve months would not get out of your lines until after the end of the twelve months and vice versa. I ask you whether if I limit the question which I asked you to the words "transported and delivered," your answers would have been the same?

390 A. Yes, sir.

Q. Is it a fact that the amounts of oil mentioned on this Plaintiff's Exhibit 4, Sheets 1 and 2, are amounts which you transported and delivered during those twelve months?

A. Yes, sir.

Q. Will you state what the total amount of Corning grade crude was that was transported and delivered by you during the twelve months in question?

A. The amount of Corning oil delivered was 748,090.02 barrels.

Q. Does that appear separately in any one of the items in this exhibit?

A. It is included in the Buckeye I. C. C. 212 or I. C. C. 209.

Q. When you say "included" do you mean to say that there are items there which were exclusively Corning?

A. All I attempted to show in the receipts on I. C. C. 212 and 209 was the total amount of crude; that includes both Pennsylvania grade and Corning.

Q. So that there are no items on this sheet which specifically separate the Corning receipts from other receipts?

A. No, sir.

Q. Or the Corning deliveries from other deliveries?

A. No, sir.

Q. You are able, however, are you, to make that separa-

391 tion by your records?

A. Yes, sir.

Q. And the amount you name of Corning is correct according to your records?

A. Yes, sir.

Q. Can you give us the total Pennsylvania grade crude produced outside of the State of West Virginia, and which was transported and delivered by you during the twelve months in question?

A. Yes, sir.

Q. And in stating that state from what connecting carrier or carriers you received it?

A. Yes, sir. I cannot by this, I don't think.

Q. I didn't ask you that. I understand that you have not kept the Pennsylvania grade and the Corning grade separate in this table, but can you do so readily by computation?

A. Yes.
Q. Won't you please do so?
A. Yes.
Q. Are you able to answer now?
A. Yes, sir.
Q. What is your answer?
A. The amount of oil received from the Cumberland Pipe Line Company was 4,690,838.14 barrels.

Q. What quality of oil was that?

392 A. Somerset oil. The amount received from the South West Pennsylvania Pipe Lines was 8,117,195.07 barrels.

Q. What grade is that?
A. Both grades. Pennsylvania grade and Mid-Continent.
Q. Will you please separate the last figures into different grades and give the figures separately for the different grades?
A. The amount received from the South West—this is Mid-Continent oil—was 8,010,289.56 barrels. Pennsylvania grade, 106,905.51 barrels. The amount received from the Buckeye Pipe Line Company was 2,459,612.81 barrels, Pennsylvania grade. Corning oil, 748,090.02 barrels.
Q. Was any Pennsylvania grade oil other than that produced in West Virginia received by your company during the twelve months in question or transported and delivered by your company during those twelve months whenever received except such as was received from the Buckeye Pipe Line Company and the South West Pennsylvania Pipe Lines?
A. Yes, sir, we received some oil at Cabin Creek, West Virginia from the Ohio Cities Gas Company.
Q. Was not that produced in West Virginia. That must have been produced in West Virginia?
A. Yes.
Q. I am asking you about Pennsylvania grade oil not produced in West Virginia?

393 A. That includes all in West Virginia.

Q. Just add the two together and give us the total amount of Pennsylvania grade which came to you from outside the State and which was transported and delivered during these twelve months. I am asking you to add together the different amounts of Pennsylvania grade that came from outside the State?
A. The amount of Pennsylvania grade oil that was received from outside the State and transported during this period was 2,566,518.32 barrels.
Q. That includes all receipts from all carriers, does it?
A. Yes.
Q. Which was transported during that period?
A. Yes, sir.
Q. You started to say something about oil from the Ohio Cities Company. What do you wish to say about that?
A. I thought you wanted the total in there; that was oil received in the State of West Virginia at Cabin Creek district.

Q. Which is the oil you are now speaking about? Tell me, and do not point with a pencil. The court does not see you point?

A. The 269,170.27, the last sub-total.

Q. Which is set down under the title: "Oil Produced in West Virginia but not run by the Eureka Pipe Line Company, and delivered to other carriers on I. C. C. tariffs?"

A. Yes, sir.

394 Q. That is what you are referring to?

A. Yes, sir.

Q. That is all oil produced in West Virginia and has already been included by you in the title of "Pennsylvania Grade Oil Produced in West Virginia," is it not?

A. Yes.

Q. And it has no place in this last total that you have given me of Pennsylvania grade which came from outside of West Virginia?

A. It has not.

Mr. Crawford: As I wish to give counsel for the State the fullest possible information, and as he has asked for the total quantities of the several grades of oil handled by the Eureka Pipe Line Company during the year ending June 30, 1919, I ask him to state here whether I have named through the testimony of this witness and through the information contained on Plaintiff's Exhibit 4, and given him, all that he desires under that head?

Mr. Avis: I think so, yes, sir.

Q. All of the Somerset oil that your company transports or transported during these twelve months and delivered was received by your company from the Cumberland Pipe Line Company, was it not?

A. It was.

Q. From what carrier was the Mid-Continent oil which was
395 transported and delivered by your company in those twelve months received?

A. From the South West Pennsylvania Pipe Lines.

Q. All of it?

A. All of it, yes.

Q. The Prairie Pipe Line Company was the initial carrier of the Mid-Continent?

A. It was.

Q. In the third column in the middle of this page there is a series of cabalistic figures and letters beginning, "I. C. C. 212." What does "I. C. C." stand for?

A. Interstate Commerce Commission.

Q. And what does "212" stand for?

A. The tariff number, the Buckeye tariff number.

Q. When you say "Buckeye Tariff number" what do you mean by the "Buckeye" part of it? What do you mean by the Buckeye part?

A. The Buckeye Pipe Line Company.

Q. What has the Buckeye Pipe Line Company to do with the tariff?

A. It is the initial carrier where the oil originated on the Buckeye Pipe Line Company, which is their tariff from sundry points in Ohio to points in West Virginia.

Q. Do you mean that it is a tariff filed by the Buckeye Pipe Line Company with the Interstate Commerce Commission?

396 A. Yes, sir.

Q. In accordance with the regulations of the Commission?

A. Yes, sir.

Q. For the transportation of oil?

A. Yes, sir.

Q. In Interstate Commerce?

A. Yes, sir.

Q. In a general way that is true of all other tariffs?

A. Yes.

Q. That is, substituting the name of other initial carriers the same statement would be true, that each is a tariff filed with the Interstate Commerce Commission by this initial carrier?

A. Yes, sir.

Mr. Crawford: I now propose to prove by this witness and offer a series of tariffs of the Interstate Commerce Commission, that is to say, tariffs filed with the Commission by various carriers and for simplicity I think it will be desirable to give these a common number followed by the I. C. C. number. That is, I ask that they be marked Plaintiff's Exhibit 5, I. C. C. No. 212, etc., and the next one would be Plaintiff's Exhibit 5, I. C. C. No. 209.

Mr. Dorworth: And the name of the company. You will have to give the name of the company each time.

Mr. Avis: I think that is a very good plan, but I do not

397 think it is necessary to offer them all in evidence inasmuch as the tariffs are attached to the bill.

Mr. Crawford: I will have these identified by the witness and marked for identification, with your consent, and then I can ask the witness a few general questions in regard to the rates and the proportion which this company receives, which he can testify to if he does not remember them, from these tariffs, and it probably will not be necessary to put the actual tariffs in. Have you any objection to that plan?

Mr. Avis: Not a bit.

Mr. Crawford: Then I withdraw my offer of the tariffs for the present, and I show the witness several tariffs and ask him to identify them.

Q. I show you a tariff which is marked "I. C. C. No. 212," of the Buckeye Pipe Line Company, and ask you to look at that and tell me whether that is the tariff upon which the amounts of oil moved which are opposite the words "Buckeye I. C. C. 212" on this table, Plaintiff's Exhibit 4 wherever those words and figures occur?

A. Yes, sir, this is the tariff.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit 5 for Identification of this date.

Q. I show you next a tariff marked "I. C. C. No. 209" of the Buckeye Pipe Line Company, and ask you whether that is
398 the tariff on which various amounts of oil moved which are set down on this table opposite the words "Buckeye I. C. C. 209," wherever those words and figures occur?

A. Yes, sir, that is the tariff.

Mr. Crawford: I ask that this be marked Plaintiff's Exhibit 6 for Identification.

Paper marked Plaintiff's Exhibit 6 for Identification of this date.

Q. I show you next a tariff marked "I. C. C. No. 33" of the Prairie Pipe Line Company, and ask you whether that is the tariff under which the oil opposite the words "Prairie I. C. C. 33" on this table moved?

A. That is the correct tariff.

Mr. Crawford: I ask that that be marked for identification as Plaintiff's Exhibit 7.

Paper marked Plaintiff's Exhibit 7 for Identification of this date.

Q. I show you tariff marked I. C. C. No. 30 of the Prairie Pipe Line Company, and ask you whether that is the tariff on which was moved the oil which is set down opposite the words "Prairie I. C. C. 30" in this table?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 8 for Identification of this date.

399 Q. I show you tariff marked I. C. — No. 66 of the Prairie Pipe Line Company, and ask you whether that is the tariff on which was moved the oil which is set down in this table opposite the words "Prairie I. C. C. 66"?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 9 for Identification of this date.

Q. I show you tariff marked I. C. C. No. 58 of the Prairie Pipe Line Company, and ask you whether that is the tariff on which was moved the oil which is set down opposite the words "Prairie I. C. C. 58" in this table?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 10 for Identification of this date.

Q. I show you tariff marked I. C. C. No. 76 of the South West Pennsylvania Pipe Lines, and ask you whether that is the tariff on

which was moved the oil which is set down on this table opposite the words "So. West I. C. C. 76"?

A. Yes, sir.

Q. "So. West" means South West Pennsylvania Pipe Lines, does it not?

400 A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 11 for Identification of this date.

Q. I show you tariff marked I. C. C. No. 17 of the Prairie Pipe Line Company, and ask if that is the tariff on which was moved the oil which is set down on this table opposite the words "Prairie I. C. C. 17"?

A. Yes, sir.

Q. The word "Prairie" in that connection means the Prairie Pipe Line Company, does it not?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 12 for Identification of this date.

Q. I show you tariff marked I. C. C. 48 of the Prairie Pipe Line Company, and ask if that is the tariff under which was moved the oil set down opposite the words "Prairie I. C. C. 48," in this table?

A. Yes, sir.

Q. The word "Prairie" as thus used means the Prairie Pipe Line Company, I suppose?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 13 for Identification
401 of this date.

Q. I show you tariff marked I. C. C. No. 43 of the Prairie Pipe Line Company, and ask you if that is the tariff on which was moved the oil set down opposite the words "Prairie I. C. C. 43" in the table?

A. Yes, sir.

Q. "Prairie" as before, means the Prairie Pipe Line Company, I suppose?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 14 for Identification of this date.

Q. I show you tariff marked I. C. C. No. 36 of the Cumberland Pipe Line Company, and ask you whether that is the tariff under which was moved the oil set down opposite the words "Cumberland I. C. C. 36" in the table?

A. Yes, sir.

Q. The word "Cumberland" there means Cumberland Pipe Line Company, I suppose?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 15 for Identification of this date.

Q. I show you a tariff marked I. C. C. No. 75 of the South
402 West Pennsylvania Pipe Lines, and ask you whether that is the tariff on which was moved the oil which is set down in this table opposite the words "So. West I. C. C. 75"?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit 16 for Identification of this date.

Q. I hand you a sheet which is marked "Supplement No. 1 to I. C. C. No. 75" of South West Pennsylvania Pipe Lines, cancellation of joint tariff. "Joint tariff I. C. C. No. 75 will be withdrawn and cancelled," and ask you whether you understand that that was a cancellation sheet issued by the South West Pennsylvania Pipe Lines, affective on its date, August 1, 1918, and which from that date cancelled this I. C. C. No. 75, Plaintiff's Exhibit 16 for identification?

A. Yes, sir, it was cancelled by that supplement.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 17 for Identification of this date.

Q. I show you tariff marked I. C. C. No. 85 of the South West Pennsylvania Pipe Lines, and ask you whether that is the tariff on which the two items of oil opposite the words "Sundry points Pa. So. West I. C. C. 85" were moved?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

403 Paper marked Plaintiff's Exhibit No. 18 for Identification of this date.

Q. I show you a tariff which is marked I. C. C. No. 158, of the Eureka Pipe Line Company, in connection with the Pure Oil Pipe Line Company, F. X. 3 No. 1, joint tariff, from Cabin Creek Station, West Virginia, to Marcus Hook, Pa., and ask you whether that is the tariff under which the oil set down here as 229,099.60 barrels opposite the words "For Marcus Hook, Pa., Eureka I. C. C. 158" was moved?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 19 for Identification of this date.

Q. I show you a tariff marked I. C. C. No. 149 of the Eureka Pipe Line Company, in connection with Southern Pipe Line Company, F. X. 3 No. 3, joint tariff Cabin Creek Station, West Virginia to Philadelphia, Pa., and ask you whether that is the tariff under which the item of 40,070.67 barrels was moved which is set down in this table opposite the words, "Philadelphia, Pa., Eureka I. C. C. 149"?
A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 20 for Identification of this date.

404 Q. Now, will you please refer to Sheet No. 2 of Plaintiff's Exhibit 4, and explain, first, generally, what that sheet shows?
A. This is Eureka's portion of the through rate on oil produced in West Virginia and delivered to other carriers for through transportation outside of the State of West Virginia.
Q. Omitting that title which you have just read, the first column shows what?
A. The name?
Q. I mean, after the word "For"?
A. For, the tender was for Claremont, New Jersey. That was the destination.
Q. That is the destination of the oil, is it?
A. The destination of the oil, yes, sir.
Q. As indicated in the various tenders?
A. Yes, sir.
Q. And what does the second column show?
A. It is the line where the tender originated.
Q. Namely, in every case the Eureka, was it?
A. Yes, sir.
Q. And the third column shows the tariffs as before?
A. Yes, sir.
Q. I. C. C. tariffs; filed by whom, by what company?
A. Filed by the Eureka Pipe Line Company.
Q. Is there anything on this sheet which shows to what other carriers the oil which is enumerated here was delivered?
405 A. No, sir.
Q. Will the tariffs show that?
A. Yes, they will show the connecting lines.

Mr. Avis: I would like to ask the witness a question, just for information, if you will permit me.
Mr. Crawford: All right.

By Mr. Avis:

Q. The amounts received by the Eureka Pipe Line Company, as shown on this Sheet 2 of Exhibit 4, on oil produced in West Virginia, are in addition to the gathering charge shown on Sheet 1?
A. Yes, sir.

By Mr. Crawford:

Q. I hand you a tariff which is entitled "I. C. C. No. 156, the Eureka Pipe Line Company, in connection with Southern Pipe Line Company, National Transit Company, Tuscarora Oil Company, Limited, Joint tariff Morgantown, West Virginia to Bayonne, N. J., Bay Way, N. J., Claremont, N. J.," and ask you whether that is the tariff which is referred to in the first line of this table, Sheet 2, and whether it was on that tariff that the 1,398,267.72 barrels of oil which are mentioned in the table were moved?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 21 for Identication
406 of this date.

Q. I show you a tariff entitled I. C. C. No. 154, the Eureka Pipe Line Company in connection with South West Pennsylvania Pipe Lines, Southern Pipe Line Company, National Transit Company and Tuscarora Oil Company, Limited, joint tariff from Bula, W. Va., and Core, W. Va., via Morgantown, W. Va., to Bayonne, Bay Way and Claremont, all N. J., and ask you whether that is the tariff upon which this item of 4,993.90 barrels on this table, Sheet 2 was moved?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 22 for Identification of this date.

Q. I show you a tariff entitled I. C. C. No. 138, the Eureka Pipe Line Company in connection with Southern Pipe Line Company, joint tariff from Morgantown, W. Va., to Philadelphia (Point Breeze Sta.), Pa., and ask you whether that is the tariff on which this amount of 790,586.60 barrels mentioned in this table, Sheet 2, was moved?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 23 for Identification of this date.

Q. I show you another tariff entitled I. C. C. No. 143, the Eureka Pipe Line Company in connection with Southern Pipe Line
407 Company, joint tariff, Morgantown, W. Va., to Bramell Point (Paulsboro) N. J., and ask you whether that is the tariff under which the amount of 397,980 barrels mentioned in this table, Sheet 2 was moved?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 24 for Identification of this date.

Q. I show you a tariff entitled I. C. C. No. 144, Eureka Pipe Line Company in connection with South West Pennsylvania Pipe Lines and National Transit Company, joint tariff from various places in West Virginia via Ewings, Pa. to Pittsburgh, Pa., and ask you whether that is the tariff upon which this amount of 174,756.03 barrels, so set down in this table, Sheet 2, was moved?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 25 for Identification of this date.

Q. I show you tariff entitled "I. C. C. No. 148, the Eureka Pipe Line Company in connection with the South West Pennsylvania Pipe Lines, joint tariff from various places in West Virginia via Ewings, Pa., to Allegheny and other points in Pennsylvania, and ask you whether that is the tariff upon which the amount of
408 35,096.74 barrels so set down in this table, Sheet 2, opposite the words "Sundry points, Pa., Eureka I. C. C. 148" was moved?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 26 for Identification of this date.

Q. I show you another tariff entitled, I. C. C. No. 145, Eureka Pipe Line Company in connection with South West Pennsylvania Pipe Lines, and National Transit Company, joint tariff from various points in West Virginia, via Bear Creek, Pa., to Franklin Station, Pa., and ask you whether that is the tariff on which was moved the amount of 273,654.11 barrels set down in this table opposite the corresponding names and figures?

A. Yes, sir.

Q. Just for information, is there any difference between Franklin and Franklin Station? By "Franklin Station" in this tariff are we to understand the city of Franklin?

A. Yes, sir.

Q. The reason I asked is, the City of Franklin is quite a large city and I did not know why it should have been denominated Franklin Station. Where is Bear Creek, Pa.? I do not remember to have heard that?

A. Bear Creek is down the Allegheny River about fifty miles from Franklin.

409 Q. Where does the oil that is referred to, or rather, how is the oil which is moved under this tariff gotten to Bear Creek?

A. It is pumped first from those stations mentioned in the Eureka tariff to Ewings Station, Pa., in the South West.

Q. It goes through Ewings, does it?

A. It goes through Ewings, yes, sir.

Q. And Bear Creek is to the north of Ewings, is it?

A. Yes, sir, north of Ewings.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 27 for Identification of this date.

Q. I show you a tariff entitled I. C. C. No. 146, the Eureka Pipe Line Company in connection with South West Pennsylvania Pipe Lines, National Transit Company, Northern Pipe Line Company and New York Transit Company, from various points in West Virginia to Olean, N. Y., and ask you whether that is the tariff upon which this item of 228,736.65 barrels of oil, so set down in the table, Sheet 2, opposite the words, "Olean, N. Y., etc." was moved?
A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 28 for Identifiation of this date.

410 Q. I show you a tariff entitled I. C. C. No. 135, the Eureka Pipe Line Company in connection with Southern Pipe Line Company, National Transit Company, Tuscarora Oil Company, Limited, joint tariff from Morgantown, W. Va., to Bayonne and Bay Way, N. J., and ask you in the same manner whether that is the tariff under which two items, one of 314,021.20 barrels and one of 260,378 barrels, as so set down in this table, were moved?
A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 29 for identification of this date.

Q. I show you another tariff entitled I. C. C. No. 134, the Eureka Pipe Line Company in connection with South West Pennsylvania Pipe Lines, Southern Pipe Line Company, National Transit Company and Tuscarora Oil Company, Limited, from Bula and Core, W. Va. via Morgantown to Bayonne and Bay Way, N. J., and ask you whether that is the tariff under which the two small items, one for 2,496.92 and one for 2,496.95 barrels, respectively, of oil so set down in this table, were moved?
A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 30 for identification of this date.

411 Q. I show you one more tariff entitled I. C. C. No. 142, the Eureka Pipe Line Company in conjunction with the Southern Pipe Line Company and other carriers, from Morgantown, W. Va. to Center Bridge, Pa., and ask you whether that is the tariff under which this item of 4,279.63 barrels in this table was moved?
A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit No. 31 for Identification of this date.

Q. If you look at sheet No. 2 of this Plaintiff's Exhibit 4, there is a total here of 4,368,244.92 barrels, I suppose; that is, I take it, the total of the oil which was produced in West Virginia and which was transported and delivered by you within the twelve months in question to other carriers for further transportation outside the State; that is the way you denominated it?

A. Yes, sir.

Q. Does this include more than one grade of oil?

A. Yes, sir. I can give you the amounts.

Q. Will you state there the kinds of crude which are included in the deliveries enumerated in this Sheet 2, and the amounts of each, which go to make up the total of 4,368,244.92 barrels?

A. Of that amount there was Pennsylvania grade amount-
412 ing to 4,360,748.32 barrels, and Cabell oil amounting to 7,496.60 barrels.

Q. Will you indicate to-morrow—I do not want to stop for it now—the connection between the amount that you have so given of Pennsylvania grade transported and the figures that you have already given on Sheet No. 1 for Pennsylvania grade transported in different ways, so that we may show that the tables are consistent? I do not question that they are consistent, but I just want to have the figures straight on the record.

A. I will.

Mr. Crawford: Now, if it is agreeable we will adjourn until to-morrow at quarter past ten.

Adjourned to Friday, November 21, 1919, at 10:15 A. M.

Last Plaintiff's Exhibit No. 31.

413 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et als.

New York, November 21, 1919.

Met pursuant to adjournment.
Same appearances.

VERNON S. SWISHER resumed the stand.

Direct examination.

Continued by Mr. Crawford:

Q. Mr. Swisher, when we adjourned yesterday we were talking about the amount of total number of barrels of different grades of

oil which are included in this table on sheet number 2 of Plaintiff's Exhibit 4. You stated that the amount of Pennsylvania grade crude oil included in that table was 4,360,748.32 barrels, and I ask you to compare that amount with the totals of the Pennsylvania crude which you had given to us in discussing the table on sheet number 1 so that we may connect the two up together. Will you do that now? All I want to show is that the arithmetical computation is correct and that the tables agree, on their face the totals being apparently different, the connection is not clear. In other words, point out which of the items on the first sheet, either singly or in the aggregate, correspond to this total which you have given me on the second sheet of 4,360,748.32.

414 A. The last item making up that total of 4,372,524.55, amounting to 4,279.63 barrels, was not a delivery during that period, but it was an additional earning for the reason that we have a Eureka Pipe Line Company tariff, number 142, to Centerbridge, Pennsylvania. We moved some oil during the last few years to Centerbridge, Pennsylvania, and The Eureka's proportion of the rate on this tariff amounted to .0358 cents per barrel. That oil was moved to Centerbridge on tenders providing that if same was moved from Centerbridge beyond within three years it would be moved on Tuscarora tariff from that point on. In other words, it was held there until such a time as it could be used at Bayonne. It was found after a three year period that that amount of oil remained in storage at Centerbridge, and The Eureka Pipe Line Company was paid the additional rate of this amount that is shown on this table.

Q. What kind of oil was that you are speaking of?

A. Pennsylvania grade oil.

Q. The total of Pennsylvania grade oil shown on this table, sheet 2, as you testified, was 4,365,027.95 barrels, the larger amount being made up by the addition of certain Cabell oil. If from that amount of 4,365,027.95 barrels you deduct this item of 4,279.63 barrels which you have just been talking about, how much is there left?

A. There would remain 4,360,748.42 barrels.

415 Q. Will you point out what totals or what amounts of oil which are set forth on sheet 1 correspond to and make up the same amounts as those which you have just spoken of?

A. That amount corresponds with the item shown on sheet 1, with the total shown on sheet 1 amounting to 4,368,718.41. In that amount just given was some Cabell oil, amounting to 7,496.60 barrels. There would then remain a difference between this amount and the other amount of 473.49 barrels. This is accounted for in this way, that some of the oil is handled twice in this way, when it comes across the State line and back, and then is delivered to the other lines. When oil is pumped over the State line once, say to the South West, it is a delivery to the South West, and it is charged as such. When it is received back again from the South West it is a receipt from the South West and when it goes forward again to the Southern say it is a delivery and shows in that way twice.

Q. Of some oil that you are speaking of you only charge one gathering charge?

A. Only one gathering charge.

Q. But two transportation charges?

A. No, only one gathering charge when it leaves the line on its first trip, on its first delivery, but there is only one charge, tankage charge, on that service to the South West or to the Southern. That is on our through rate as a credit to our transportation rev-
416 enue on that tariff, on that movement, and that is the reason for that little difference.

Q. Where your oil is produced in West Virginia and is delivered to a carrier which takes it into another state once for all, you charge on that a gathering charge of twenty cents as indicated on sheet number 1?

A. Yes.

Q. You also charge on that your proportion of the through rate on such oil as indicated on the table on sheet number 2?

A. Yes sir.

Q. As to a certain amount of oil which has been produced in West Virginia and delivered to a connecting carrier, and it then under the course of transportation as shown by Mr. Kenney comes back into the State of West Virginia and goes back again a second time, what do you charge?

A. There is no further charge.

Q. Please repeat the question, and understand that I am asking you now for all the charge that is made upon the kind of oil that I described in this question.

"Q. As to a certain amount of oil which has been produced in West Virginia and delivered to a connecting carrier, and it then under the course of transportation as shown by Mr. Kenney come-back into the State of West Virginia and goes back again a second time, what do you charge?"

A. We charge The Eureka's proportion of the through rate.
417 Q. You charge a gathering charge, don't you, on all such oil at once?

A. Yes sir.

Q. And you charge the Eureka's proportion of the through rate the first time it goes over the line?

A. That is the second time it goes over the line.

Q. The first time you do not charge for that?

A. No sir.

Q. Then at any rate upon such oil you charge just the same as you do on the other shipments which went over the line once and stayed over?

A. Yes sir.

Q. That being so, then I do not understand this difference between these two amounts of 4,368,718.01 on sheet 1, and 4,368,-234.92 which you have testified to?

A. This oil does not all move at the same time. First it moves over to the South West and comes back again, it may be a week or a month before it is finally moved again to the second line, and there would be a balance of that overlap, and left over.

Q. Is this the explanation, that on the oil which crosses the State

line twice in the process which you describe, which I judge to have been from your figures 473.40 barrels——

A. Yes sir.

418 Q. During the twelve months in question?

A. Yes sir.

Q. You count it twice in the table on sheet 1 because it is delivered twice?

A. Yes sir.

Q. But you only charge for it once, and therefore the total as indicated in the sheet, in the total on sheet 2, would be somewhat less than the total on sheet 1?

A. Yes.

Q. And less by the amount of oil which in the circuitous fashion you describe goes out of the state and comes back again and goes out a second time, that you only charge once, of the through rate and twice for delivery because that is the way you keep your books?

A. Yes sir.

Mr. White: They deliver twice and receive it once.

Mr. Dorworth: They receive it twice and deliver it twice.

Q. You receive it twice, of course?

A. Yes.

Q. And you deliver it twice?

A. Yes. We receive it first from other states, but it is only received from another line once.

Q. But the important thing is that from this oil that goes

419 over the line twice, you only charge one gathering charge and once your proportion of the through rate?

A. Yes sir.

Q. Refer to the table on sheet number 2, starting at the top, the first total is of oil produced in West Virginia and delivered to points in West Virginia for use there, and upon that oil you only make a gathering charge?

A. Yes sir.

Q. And there is of course no question of any proportion of the through rate as to that?

A. There is not.

Q. The second table that gives the oil produced in West Virginia and delivered to the Pure Oil Company and the West Virginia Pipe Line. What charge do you make on that oil?

A. It is a gathering charge only.

Q. You get on that oil no proportion of the through rate?

A. No sir.

Q. Take the table at the bottom of sheet 1, oil produced in West Virginia but not run by The Eureka Pipe Line and delivered to other carriers on I. C. C. Tariff, what compensation do you get on that?

A. We get a proportion of the through rate only.

Q. And in that case you do not get any gathering charge?

A. No sir.

420 Q. And these figures opposite the item last mentioned, that is, .1334 and .1430 as indicating proportion of a through rate, are they estimated in the same way as corresponding figures in the table on sheet 1?

A. Yes sir.

Q. And come under the same class?

A. Yes sir.

Mr. Avis: Mr. Swisher, will you turn to sheet number 1 of Exhibit No. 4 and look at the letters in capitals, "Oil produced in West Virginia and delivered at Pennsylvania State line to other carriers," etc., what I want to know is, that does not move on any tariff at all, does it?

The Witness: Yes, that is oil that is applied on tariffs, but it is the gathering rate before the through rate begins.

Mr. Crawford: I will follow that up:

Q. I understand you that all the oil mentioned under the head just referred to by counsel for the state does move on tariffs, doesn't it?

A. Yes sir.

Q. And is the very same oil which is referred to in the table on sheet number 2?

A. Yes.

421 Q. The discrepancy in the figures being caused by the fact that you explained that oil which crosses the State boundary twice?

A. Yes sir.

Q. There is one other item which I have not called your attention, and that is the item on sheet 2 which reads as follows, "Eureka Pipe Line proportion of 1% deduction of Eureka Company's 4,461.86 barrels," etc. Will you please explain that item?

A. On all Eureka tariffs there is a regulation providing for a deduction of 1% on the tariffs in oils. This oil is divided among the carriers. That oil represents as shown by 4,481.86 barrels, The Eureka's proportion of that 1% on all tenders completed during that year.

Q. I show you Plaintiff's Exhibit 30 for Identification, and I call your attention to this language under the head of regulations:

"Eight (8) a deduction of one per cent will be made from the amount of each tender when the oil is received to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines."

Is that the one per cent deduction to which you refer?

A. Yes sir.

Q. And does that or a similar provision occur on all the

422 tariffs of The Eureka Pipe Line Company?

A. Yes sir.

Q. And is there a similar provision on the tariffs issued by other pipe line companies?

A. Yes sir.

Q. That is general, isn't it?

A. Yes sir, that is general.

Q. That one per cent deduction is divided on some ratio between connecting carriers, isn't it?

A. Yes sir.

Q. And as between the Eureka and the carriers to which it delivers oil, what is ratio of division?

A. According to the length of miles of the carriers, miles of pipes.

Q. You mean the total length of mileage of the carrier or the total distance to which the shipment is to be taken?

A. The total distance to which the shipment is to be taken.

Q. So it is not possible to lay down now a fixed rule of these shipments? I mean you cannot state now what the ratio is in these cases, except by the general rule which you have described about the mileage?

A. There is a division shown on each tariff, and each carrier—there is a division sheet filed whereby each carrier knows what they will get on a shipment.

423 Q. But I say, that differs with different shipments?

A. Oh, yes.

Q. This amount of 4,461.86 barrels is the proportion of that one per cent deduction on all the deliveries which are shown in the table on sheet 2 which came to the Eureka?

A. Yes.

Q. You charge the company with what amount received on account of that oil, I mean what proportion?

A. We collect from all parties who issue tenders a gathering rate on the full amount of the tender. That is, 4,461.86 barrels is the Eureka's proportion retained in The Eureka Pipe Lines, and the twenty cents of that amount we take and put in our transportation revenue.

Q. Do I understand you that you will collect in the first instance the twenty cent gathering charge on the whole of the one per cent deduction?

A. Yes.

Q. And you retain so much of it as it relates to the proportion of the deduction which the Eureka gets?

A. Yes sir.

Q. What becomes of the gathering charge on the other portion of the one per cent? What becomes of the twenty cents on the other portion of the one per cent?

A. The Eureka has taken that in when the delivery is
424 made. This amount of 4,461.86 was not delivered. That was retained by the Eureka. The proportion of the one per cent is in the totals of sheet 1 as forwarded to the connecting lines along with the tenders.

Q. You don't mean that of course, but what you have said would indicate that you have collected a gathering charge twice, and of course that is not the case. Will you explain, Mr. Swisher, if you charge yourself with a gathering charge once on sheet 1 on the whole, why do you charge yourself again or apparently so with a gathering charge or a part of it on sheet 2?

A. I don't mean to say that. On sheet 1 it only includes the deliveries of those tenders, not the part which we retain.

Q. The delivery then of oil under these tariffs includes ninety-nine and a fraction per cent of the total that you originally receive from the shipper?

A. Yes sir.

Q. And the other section of the one per cent you retain?

A. Yes.

Q. In the table on sheet 1 you charge yourself with a gathering charge on the ninety-nine and a fraction per cent that you deliver?

A. Yes sir.

Q. And on the table on sheet 2 you charge yourself with a
425 gathering charge on the fraction of the one per cent that you retain?

A. Yes sir.

Q. Under the tariff?

A. Yes sir.

Q. There seems to be a difference of opinion as to whether my view of the word "charge" is correct, or whether these amounts you have skopen of as charged should be spoken of as credits. Whichever is correct, you mean that these amounts are parts of the earnings or revenues from transportation of the company?

A. Yes sir, we get our revenue for that.

Q. Now, Mr. Swisher, I call your attention to a map which is a copy of the map annexed to the bill as the First Map, and which for convenience I offer in evidence and ask to be marked as Plaintiff's Exhibit 32, First Map.

Mr. White: It is an exact copy.

Map marked Plaintiff's Exhibit 32, First Map, of this date.

Q. Will you please examine this map and tell me whether you are generally familiar with it?

A. Yes sir, I am generally familiar with that map.

Q. There are heavy black lines appearing on this map and crossing various states, within states as the case may be. Without going into detail what do these black lines indicate?

426 A. Those are pipe lines.

Q. Are they the lines of the pipe line companies which have been characterized in this proceeding as connecting carriers of The Eureka Pipe Line Company and also to some extent the pipe lines of the Eureka itself?

A. Yes sir.

Q. One of the pipe line companies which you testified to as being an initial carrier, and the name of which appears simply as "Prairie" on Plaintiff's Exhibit 4 is as you testify the Prairie Pipe Line Company. Will you point out the lines of the Prairie Pipe Line Company as indicated on this map, stating from what point to what point they run?

Mr. Crawford: It is admitted that the black lines shown on this map, Plaintiff's Exhibit 32, First Map, so far as they are west of

the State of Pennsylvania and of West Virginia, correctly indicate the general course of the pipe line or lines of the various carriers, the names of which are marked upon the map. It is not intended to be an admission that there is or is not in any case a single pipe but simply that the lines show the general course of the system.

Mr. Avis: Yes.

A. The furthest Prairie terminal is Tiffin, State of Texas. That runs in a northerly line to Drumwright, Oklahoma, where it
427 connects with the Oklahoma Pipe Line Company; and runs from there to Glen Pool, Oklahoma. From Glen Pool the Prairie Pipe Line runs north to a junction with a branch to Kansas City, then on from the junction to Carrollton, Missouri. There are two lines branching from Carrollton, one in an easterly direction to Wood River, Illinois. That is the end of that extension. Then from Carrollton, Missouri, it runs in a northerly direction crossing the State of Missouri and Iowa and Illinois to Griffith, Indiana. The Prairie also has a system running south from the State line of Oklahoma to Louisiana State.

Q. This last portion of the pipe line of the Prairie Company is separated from the other lines of the Prairie Pipe Line Company, is it not?

A. Yes sir.

Q. It is a connecting link, is it not, in the State of Arkansas between the Oklahoma Pipe Line Company's line from Glen Pool to the Arkansas State line and the line of the Standard Oil Company of Louisiana which runs from Ida to Baton Rouge on this map?

A. Yes sir.

Q. Did your company, since July 1st, 1918, receive any shipment which originated with the Standard Oil Company of Louisiana?

A. No sir.

428 Q. Has it since that time received any shipment which passed over this detached fragment of the Prairie Oil Company's system in the southwestern part of Arkansas?

A. No sir.

Q. Then we will for the present disregard all the lines that you have described as running from Glen Pool southeast, that is the Oklahoma and fragment of the Prairie and the Standard Oil Company of Louisiana, and come back to the principal lines of the Prairie Pipe Line Company, and I understand you to say that they extend continuously from Tiffin, State of Texas, on to a branch at Wood River, Illinois, and to another branch at Griffith, Indiana, with the exception of a short distance in Oklahoma where portions of the Pra-rie Oil Company's system appears to be connected by a branch line marked O. P. L. Co, which you have said means Oklahoma Pipe Line Company, is that right?

A. Yes sir.

Q. From Wood River, Illinois, what pipe line company's line extends eastward as shown on this map, Mr. Swisher?

A. The Illinois Pipe Line Company.

Q. And will you state the course of that line?

A. The Illinois Pipe Line Company's line runs through the State of Illinois.

Q. From where to where?

A. From Wood River, Illinois, through the State of Illi-
429 nois and the State of Indiana to Bluffton, Indiana. From thence easterly through the states of Indiana and Ohio to Negley, Ohio.

Q. Negley is the easterly terminal of that line, is it not?

A. Yes sir, the easterly terminal.

Q. I see a line projecting northerly from Bluffton to Preble, Indiana. What is that line?

A. That is the Illinois Pipe Line Company.

Q. Then in addition to the through line that you have described from Wood River to Negley, there is a short piece that goes northeast from Bluffton to Preble?

A. Yes sir.

Q. Also belonging to the same company?

A. Yes sir, and also a similar connection from the main line to Lima, Ohio, to the lines of the Buckeye Pipe Line Company.

Q. Is the first piece from Bluffton to Preble a similar connecting link with the Buckeye?

A. Yes sir, it connects with the Indiana Pipe Line Company.

Q. The northerly branch of the system of the Prairie Pipe Line Company terminates at Griffith, Indiana, I understand you to say?

A. Yes sir.

Q. With what other line does it there connect?

A. It connects with the Indiana Pipe Line Company.

Q. And where does the line of the system of that company
430 start?

A. The Indiana Pipe Line Company's system starts from Griffith, Indiana. They have a branch north to Whiting, Indiana, for a short distance which extends easterly from Griffith to the State line of Ohio.

Q. At a point east of Preble?

A. Yes sir, at a point east of Preble.

Q. What is the branch from Griffith to Whiting used for, and how does the current through that branch run?

A. That current runs——

Q. It runs from Griffith to Whiting, doesn't it?

A. Yes.

Q. And not from Whiting to Griffith?

A. No, from Griffith to Whiting.

Q. Is it used to transport oil to Whiting?

A. Yes sir.

Q. Not the reverse?

A. No, not the reverse.

Q. The through current of oil passes through Griffith, does it not, and then easterly through the Indiana Pipe Line Company's lines?

A. Yes sir.

Q. So far at least as it has come over the northerly branch of the Prairie?

A. Yes, sir.

431 Q. What is the small line which runs from Sugar Creek down to the main line of the Prairie in the western part of Missouri?

A. That line is to the Sugar Creek Refinery, from the main line of the Prairie.

Q. Which way does the current run in that?

A. North.

Q. It is used, is it, to deliver oil to the Sugar Creek Refinery?

A. Yes sir.

Q. And do or do not shipments of oil for the east originate at Sugar Creek Refinery?

A. They do not.

Q. Now we come to the State of Ohio, and to the Buckeye Pipe Line Company's line. Will you explain how that runs on this map, Plaintiff's Exhibit 32, First Map?

A. The Buckeye Pipe Line Company's pipe line starts at the westerly state line of Ohio, it runs easterly to Lima, Ohio, thence northerly to Cygnet, Ohio, to a junction. There is a northern line from Cygnet to—I was wrong there.

Q. Just confine yourself to the Buckeye at present?

A. To Cygnet, to a junction. It extends eastwardly from Cygnet to a junction point called Mantua. There is a line running north from Mantua to Cleveland. Their line again runs easterly from Mantua to the Pennsylvania State line. There is also a line

432 running in a southeasterly direction to the Pennsylvania State line, connecting with the South West Pennsylvania Pipe Lines.

Q. The portion of the Buckeye system which is indicated as extending from Mantua to Cleveland, which way does the current of oil flow in that branch?

A. Northerly.

Q. In other words, is that branch used for delivering oil to Cleveland, or to parties in Cleveland?

A. Yes sir.

Q. And is Cleveland itself a point at which shipments of oil for the east originate?

A. No sir.

Q. I see running north from Cygnet, Ohio, a line marked "Imperial P. L. Co." You might state what that is.

A. That is Imperial Pipe Line Company. There is a connection with the Buckeye Pipe Line Company at Cygnet, Ohio.

Q. Does The Eureka Pipe Line Company receive any shipments of oil which have passed over the line of the Imperial Pipe Line Company?

A. They do not.

Q. And did not during the period we have had under discussion?

A. No sir.

433 Q. As a matter of fact, that line is used to carry oil into Michigan, is it not, for delivery there at various points?

A. Yes sir.

Q. Or into Canada?

A. Yes sir.

Q. And the current flows northward, does it not?

A. Yes sir.

Q. And there is no place along the line of that Imperial Pipe Line Company at which shipments for the east originate?

A. No sir.

Q. Connecting with the Buckeye Pipe Line Company at the State line east of Mantua, there is a line running to Bear Creek, with the word "northern" on it. Please explain what that is.

A. That is a connecting line in Pennsylvania, the Northern Pipe Line Company.

Q. Does your company receive, or has it received since July 1st, 1918, any shipments of oil which pass through the Northern Pipe Line Company's lines?

A. No sir.

Q. Or through this particular stretch we are speaking of, from the State line to Bear Creek?

A. No sir.

434 Q. The lines of the Northern Pipe Line Company, are in a rough way, parallel to the pipe lines which run through southern Pennsylvania, are they not?

A. Yes sir.

Q. Will you point out the line of the Cumberland Pipe Line Company, as indicated on this map, Plaintiff's Exhibit 32, First Map?

A. The southern point of the Cumberland Pipe Line Company is at Monticello, Kentucky, running northward and connecting into the lines of The Eureka Pipe Line Company at the West Virginia State line.

Q. This map, Exhibit 32, First Map, is intended just to show these various systems in broad outline, is it not; it does not undertake to give all the details?

A. No sir.

Mr. Crawford: Mr. Avis, this Map Second, which is attached to the bill, seems to be superseded by the Third Map much more satisfactorily, especially when taken in conjunction with the First Map. I think, for example, that there are certain lines which are shown on the First Map, which for some reason are not laid down on this Second Map.

Mr. Avis: As I understand it, everything is shown on the Third Map that is shown on the Second Map?

435 Mr. Crawford: Everything except the lines in the eastern part of Pennsylvania, and those are shown on the First Map; on a lower scale, but I think with sufficient distinctness.

Mr. Avis: Very well.

Mr. Crawford: At any rate for the present, I prefer not to put that

in; if it can be amended by adding the omitted lines, perhaps I may ask your permission to put it in later in my case, but at present I think it would simply confuse the court.

Mr. Avis: Very well.

Mr. Crawford: It is here, however, for you to examine and interrogate witnesses about if you please. It is a copy of what was attached to the bill as the Second Map.

I observe also that on Plaintiff's Exhibit 3, Third Map, the name of Negley, a station in the most easterly part of Ohio, is omitted, though the line running to or from that station seems to be indicated. I ask your permission, Mr. Avis, to have the station and the name Negley added to this third map after we adjourn, and then it can be put on the blueprints also.

Mr. Avis: That is agreeable.

By Mr. Crawford:

Q. Now directing your attention once more to Plaintiff's Exhibit 32, First Map, will you please show the course of the lines
436 of the South West Pennsylvania Pipe Lines?

A. The South West Pennsylvania Pipe Lines start at the State line of Ohio and run in a generally southerly course to the State line of West Virginia. The South West also has a pipe line from the southwesterly point of the State of Pennsylvania, running north through Ewings to Nedsky, Pennsylvania. They have a line from Nedsky, Pennsylvania to Pittsburgh, Pennsylvania. They also have a line from Georgetown and Sands and Island Run in the westerly part of the State, connecting with The Eureka Pipe Line Company.

Mr. Avis: Right there, Mr. Crawford, off the record, he speaks of a pipe line. That might be confusing, as being one line. Do you not mean a system?

Mr. Crawford: The whole thing is a system. I have endeavored to distinguish between lines and pipes. I have endeavored to use the word "pipe" as indicating a single pipe, and a "line" as a congeries of pipes, an aggregation of pipes.

Mr. Avis: If it goes in the record that way, that will be all right.

Mr. Crawford: That is the meaning I intend, and I am sure that is the meaning of the witness.

Q. That is what you meant, was it not?

A. That is what I meant.

437 Q. If there is only a single pipe you refer to it as a pipe; if there are a number of pipes parallel, forming part of one line, you call it a line?

A. Yes sir.

Q. At least, that is what you mean?

A. Generally, yes, a system.

Mr. Avis: All right, that is satisfactory.

The Witness: (Continuing.) They also have a line from the West Virginia State line running easterly to Nedsky.

Q. That is also shown on Plaintiff's Exhibit 3, Third Map, is it not?

A. Yes sir.

Q. And these other lines that you have spoken of, one running from Ewings to Negley and one running from the southwest corner of the State of Pennsylvania through Ewings to Nedsky, are also shown on this Plaintiff's Exhibit 3, Third Map, are they not?

A. Yes sir. I might add, they also have a short line connecting with the Crescent Pipe Line Company at Greggs, from Cook's Ferry to Greggs.

Q. That is all in the South West Pennsylvania Pipe Lines, is it not?

A. With the exception that they have on this Third Map
438 shown a couple of those that are not shown there on the First Map.

Q. That is all that are shown on the First Map?

A. Yes sir.

Q. I notice that on this First Map the letters "Co" come after "S. W. P. P. L." in two or three places. That is an error, is it not?

A. It is.

Q. There is no word "company" in the proper title of that corporation, is there?

A. No sir.

Mr. Crawford: If Mr. Avis does not object, it will be less confusing to just strike that out.

(The word "co" was stricken from the map.)

My attention has been called to the fact that in the bill the same error has occurred in several places. Would it be asking too much if we ask that it be understood that without further formality the bill is amended by leaving out that word "company" wherever it occurs, in connection with the South West Pennsylvania Pipe Lines?

Mr. Avis: It can be so treated, provided the same treatment is accorded to the answer where the same mistake occurs.

Mr. Crawford: Oh, certainly. I was not aware that you
439 had done the same thing.

Mr. Avis: I expect we have done the same thing in the answer, spoken of it as a company.

Q. Now will you point out on this map, Plaintiff's Exhibit 32, Third Map, the course of the line of the Southern Pipe Line Company?

A. The lines of the Southern Pipe Line Company start at the State line, southwestern Pennsylvania, running in an easterly direction to Philadelphia, Pennsylvania and Bramell Point, New Jersey.

Q. Bramel Point is just on the east side of the Delaware River, is it not?

A. Yes sir.

Q. The point where the line of the Southern Pipe Line Company starts to the westerly is shown on Exhibit 3, Third Map, as the junction between the lines of The Eureka, indicated by red ink lines, and

the lines of the Southern indicated by black ink lines on the State line, is it not?

A. Yes sir.

Q. That portion of the line of the Southern Pipe Line Company which runs from Millway to Philadelphia is the southerly of the two lines running between those two points, and bears the letters "S. P. L. Co.", is that correct?

A. Yes sir.

440 Q. The northerly of those two lines has the words "N. T. Co." on it?

A. Yes sir.

Q. What does that mean?

A. National Transit Company.

Q. Is the National Tranist Company a pipe line company?

A. Yes sir.

Q. Tell me where its main line runs?

A. The National Transit Company main line runs from Nedsky, Pennsylvania northerly via Bear Creek to the New York State line, connecting with the New York Transit Company. Between Kane and Cole Grove there is a connection with the Northern Pipe Line Company, and from Cole Grove——

Q. When you say there is a connection, do you mean that the lines of the National Transit Company end at Kane, and begin again at Cole Grove?

A. I do.

Q. And that in between those two points there is a short line belonging to the Northern Pipe Line Company?

A. Yes sir.

Q. Very well, go on further with the National Transit Company.

A. The lines run southeasterly from Cole Grove to a junction point called Millway, Pennsylvania. They run easterly from

441 Millway to Philadelphia, Pennsylvania.

Q. That is the line you previously described?

A. Previously described. They have a line from Millway to the New Jersey State line, running easterly.

Q. To what point?

A. To Centerbridge.

Q. Centerbridge in New Jersey, or in Pennsylvania?

A. Centerbridge is in Pennsylvania.

Q. That is, the line you are last speaking of is from Millway to Centerbridge?

A. Yes sir.

Q. Now, what does the line which extends from Millway to Baltimore represent?

A. They also have a line extending from Millway to the Pennsylvania State line.

Q. At what point?

A. At Fawn Grove, Pennsylvania.

Q. And from there?

A. And from Fawn Grove it connects into the lines of the Maryland Pipe Line Company, which runs to Baltimore.

Q. I see on this map a line marked "Crescent P. L. Co." What line is that?

A. That is the Crescent Pipe Line Company.

Q. The Cresecent Pipe Line Company's line, you mean?

442 A. Yes sir.

Q. Where does that run?

A. Their lines extend from Greggs, Pennsylvania, which is in the westerly part of the state, running easterly to Marcus Hook, Pennsylvania.

Q. Whereabouts is Marcus Hook?

A. It is near Philadelphia.

Q. On the Delaware River?

A. On the Delaware River.

Q. South of Philadelphia, is it not?

A. South of Philadelphia.

Q. And is Greggs a point on the line of any other pipe line company?

A. It is the junction point with the South West Pennsylvania Pipe Lines.

Q. You mean with the line of that company, do you?

A. With the line of that company.

Q. Is there any junction between the lines of the Crescent and the Southern Pipe Line Companies where they cross, as shown on the map?

A. No sir.

Q. Now, will you point out the portion of the pipe line of the Pure Oil Pipe Line Company?

Mr. Avis: Is there a Pure Oil Pipe Line Company and

443 a Pure Oil Company?

Mr. Crawford: There is a Pure Oil Company, which is a refining company. It may be a producing company also; at any rate there are two corporations.

A. The Pure Oil Pipe Line Company's lines run from Morgantown, West Virginia easterly through southern Pennsylvania to Marcus Hook, Pennsylvania.

Q. Between the state line and the line of the Southern Pipe Line Company? It is so indicated on this map, at any rate, is it not?

A. Yes sir.

Q. Do you know as a matter of fact whether it is south of that?

A. I do not.

Q. So much of the pipe line of the Pure Oil Company as lies within the State of West Virginia is indicated on Plaintiff's Exhibit 3, Third Map, by a green line, is it not, starting from a point just northwest of Morgantown?

A. Yes sir.

Q. There is a line on this Plaintiff's Exhibit 32, First Map, marked "Tuscarora Oil Co." Does that represent another pipe line?

A. Yes sir.

Q. Belonging to a company of that name?

444 A. The Tuscarora Oil Company Limited.

Q. Now will you trace the course of that pipe line?

A. Their lines run east from Negley, Ohio, through the State of Pennsylvania to Centerbridge, Pennsylvania, thence easterly across the State of New Jersey, to Bayonne, New Jersey.

Q. And Bay Way?

A. And Bay Way.

Q. And Claremont also.

A. And Claremont also.

Q. The lines of the Tuscarora Oil Company start at the State line of Pennsylvania, do they not?

A. I am not sure of that.

Q. Whether they do or not, they connect with lines which do go to Negley?

A. Yes sir.

Q. Whether they be its own lines or the lines of some connecting carrier?

A. Yes sir. The Tuscarora also has a short length of line from Negley connecting with the South West Pennsylvania Pipe Lines at Cook's Ferry, Pennsylvania.

Q. Well, does the pipe line of the Tuscarora Oil Company make a connection with the lines of the South West Pennsylvania Pipe Lines at any other point?

A. No sir.

Q. They cross, do they not, at a place called Maharg?

445 A. They cross the lines of the National Transit Company.

Q. Then they do make a connection with the lines of the National Transit Company at that point?

A. Yes, they do at Maharg.

Q. In the northerly part of the state there are several lines in addition to those you have mentioned, which are marked "Northern P. L. Co." or "N. P. L. Co." I suppose those are the lines of the Northern Pipe Line Company?

A. Yes sir, the Northern Pipe Line Company.

Q. And they extend in a general way from the State of Pennsylvania east to Bear Creek, and then northeast to the New York State line, do they not?

A. Yes sir.

Q. What do they connect with there?

A. They connect with the lines of the New York Transit Company.

Q. I think you said that during the period under consideration, since July 1st, 1918, your company had received no shipments which passed through the lines of the Northern Pipe Line Company; is that correct?

A. Yes sir, there was no oil received that passed through their lines.

Q. And of course none passed through the lines of the New York Transit Company?

446 A. No oil passed through the lines of the New York Transit Company that was received.

Q. No oil received by your company which passed through the lines of the New York Transit Company?

A. No sir.

Q. To be sure that you have this statement correct, my question is whether your company received any oil which had first passed through the lines of the New York Transit Company? Your answer to that is "no."

A. Yes sir, no is correct.

Q. Now as to the reverse of that, has any oil which has passed through the lines of your company and been shipped out of the state subsequently passed through the lines of the New York Transit Company?

A. It has.

Q. The lines of the New York Transit Company are indicated on lines in the State of New York running from Buffalo to Olean, and east along the southern part of New York, and then southeast across the northern part of New Jersey to Saddle River, are they not?

A. Yes sir.

Q. And there is a short connection between Saddle River and Brooklyn. What line is that, is that part of the New York Transit Company?

A. I do not know.

447 Mr. Towl: The Standard Oil Company of New York.

Q. You do not know about that?

A. I do not, no sir.

Q. All right. Now I call your attention again to Plaintiff's Exhibit 4, Sheet 1, and to the third item in the table in the middle of the page, which reads "For Bayonne, N. J.,—Prairie I. C. C. 33," and then an amount of oil and other figures, and I show you Plaintiff's Exhibit 7 for Identification and ask you whether that is the tariff on which the oil just referred to was transported?

A. Yes sir, it is.

Q. That tariff is by its language, for transportation from various stations in Kansas or stations in Oklahoma to Bayonne and Bay Way, New Jersey, is it not?

A. Yes sir.

Q. Assume any one of the shipments which is indicated under this item in the table, and include it in the amount of 3,728,665.65 barrels, and trace its course over the different lines through which it passes, refreshing your memory if you wish by Plaintiff's Exhibit 7 for Identification.

A. The oil on this tariff is started from the sundry points in Kansas and Oklahoma——

Q. Started by what company?

A. Started by the Prairie Pipe Line Company; moving
448 easterly to the connecting carrier at Wood River, Illinois, the Tuscarora Oil Company.

Q. You do not mean moving easterly to the connecting carrier; you mean it moves easterly to Wood River, Illinois, do you not?

A. To Wood River, Illinois.

Q. Then what happens to it?

A. Connecting with the line of the Illinois Pipe Line Company;

from Wood River it moves easterly and connects into the line of the Tuscarora Oil Company at Negley.

Q. Through what states has it passed?

A. Passing through the states of Illinois, Indiana and Ohio; to Negley, Ohio.

Q. Very well. Now, through what states did it pass in getting to Wood River?

A. It passed through the States of Kansas, Oklahoma and Missouri.

Q. Very well. Then what happened to it?

A. It got to Negley; it is delivered from Negley——

Q. Do not say "is" delivered; I am asking you what happened now? This is historical.

A. Through their lines—it was delivered——

Q. Through whose lines?

A. Through the lines of the Tuscarora Oil Company Lim-
449 ited, to the South West Pennsylvania Pipe Lines at Cook's Ferry. From Cook's Ferry it moved through the lines of the South West Pennsylvania Pipe Lines to the State line, connecting with The Eureka Pipe Line Company at the West Virginia State line.

Q. Is that the point which is indicated on Plaintiff's Exhibit 3, Third Map, where the black lines and the red lines meet, just northwest of Morgantown?

A. Yes sir. The oil passes through Morgantown——

Q. No, not "passes." This is history. This is something that actually happened.

A. The oil is delivered——

Q. No, excuse me, I am asking you about a particular shipment now. Do not tell me about a practice. I ask you what took place; now, you have described the movement of the shipment up to this point, now go on.

A. It moves——

Q. You mean to say that the oil was moved, I suppose?

A. The oil was moved from that point to Morgantown, West Virginia, on the lines of The Eureka Pipe Line Company, and delivered through the lines of The Eureka Pipe Line Company to the Southern Pipe Line Company at the Pennsylvania State line. From then over the lines of the Southern Pipe Line Company to Millway, Pennsylvania, thence via the National Transit Company's lines to the New Jersey State line at Centerbridge, Pennsylvania,
450 thence by the Tuscarora Oil Company's lines to destination.

Q. That, as you have already testified, was a movement of Mid-Continent oil, was it?

A. Yes sir.

Q. And the same course was taken by the other shipments under that Plaintiff's Exhibit 7 for Identification, which are included in this amount of 3,728,665.65 barrels?

A. Yes sir.

Q. Now look, please, at Plaintiff's Exhibit 8 for Identification, and tell me whether that is the tariff under which the amount of 1,190,-

661.96 barrels of oil, being set down in this table, opposite the word "Prairie, I. C. C. 30" was moved?

A. Yes sir.

Q. That was also, I think you said, Mid-Continent oil?

A. Mid-Continent oil, yes sir.

Q. Now will you take any shipment included in that total and show what its course was, from the origin to the point of delivery, which is indicated on this exhibit as Bayonne, New Jersey?

A. This oil originated in Kansas and Oklahoma, moved via the lines of the Prairie Pipe Line Company easterly, through the States of Oklahoma, Kansas, Missouri, Iowa, Illinois and Indiana to Griffith, Indiana.

451 Q. Up to that point it has all been through the lines of the Prairie Pipe Line Company, has it not?

A. Yes sir.

Q. That is, the northerly branch of those lines?

A. Through the northerly branch of the Prairie Pipe Line Company?

Q. Now go on from Griffith?

A. Then easterly via the Indiana Pipe Line Company to the Indiana State line, thence easterly via the Buckeye Pipe Line Company, through the State of Ohio to the Pennsylvania State line.

Q. Through what points in Ohio does it pass, I mean which are shown on this map, Exhibit 32, First Map?

A. Through Lima, Cygnet and Mantua, Ohio, to the Pennsylvania State line.

Q. At or near Negley?

A. At or near Cooks Ferry. Thence southerly via the South West Pennsylvania Pipe Lines, via Ewings, to the West Virginia State line; thence via The Eureka Pipe Line Company via Morgantown to the Pennsylvania State line, connecting with the Southern Pipe Line Company; thence easterly via the Southern Pipe Line Company to Millway, Pennsylvania, connecting with the lines of the National Transit Company; thence easterly through the lines

452 of the National Transit Company to Centerbridge, Pennsylvania, connecting with the lines of the Tuscarora Oil Company, Limited; thence easterly through New Jersey to Bayonne and Bay Way.

Q. Now without going into so much detail, I hand you Plaintiff's Exhibits 9, 10, 12, 13 and 14 for Identification, which are also tariffs which you testified were issued by the Prairie Pipe Line Company, and ask you whether the shipments which moved under those tariffs as you testified, and which are shown in this table on sheet 1, Plaintiff's Exhibit 4, moved in the same general manner as those you have just testified to, through lines of the companies the names of which are given at the tops of the respective tariffs.

A. That is correct, they followed the route named in the tariff.

Q. The routings as indicated on these by the names of the other pipe line companies, are indicated here as being connected with the Prairie Pipe Line Company?

A. Yes sir.

Q. Do you know whether these tariffs were filed with the Interstate Commerce Commission or not?

A. They have been.

Q. They are all I. C. C. tariffs, are they?

A. They are.

Q. And what do the words "joint tariff" upon them mean?

453 A. In connection with the other pipe line companies.

Q. When a carrier such as the Prairie Pipe Line Company files a tariff for through transportation to points beyond its line, is it the custom for the other carriers who are to unite in the transportation to file a concurrent with the tariffs?

A. Yes sir.

Q. Then the words "joint tariff" mean, do they not, that these tariffs are not only issued by the Prairie Pipe Line Company but were concurred in by the connecting carriers whose names appear at the top of the sheet in each case?

A. Yes sir.

Q. What you have testified to in regard to tariffs issued and filed by the Prairie Pipe Line Company and concurred in as you have stated by the connecting carriers whose names appear upon the faces of the sheets setting forth the tariffs, is that also true of the several tariffs issued by the South West Pennsylvania Pipe Lines, being Plaintiff's Exhibits 11, 16, 17 and 18 for Identification; I mean is it true that the oil which was transported and delivered by your company as you have previously testified, under those tariffs, moved according to the routing shown upon the face of the tariffs?

A. Yes sir.

Q. The same is true also of Plaintiff's Exhibits 5 and

454 6 for Identification, which are tariffs issued by the Buckeye Pipe Line Company, is it not?

A. Yes sir.

Q. And of the oil moved on the tariff Plaintiff's Exhibit 15 for Identification, which was I. C. C. Tariff number 36, of the Cumberland Pipe Line Company?

A. Yes sir.

Q. All of these tariffs were joint tariffs were they not?

A. Yes sir.

Q. That is, they were tariffs which were issued and filed with the Interstate Commerce Commission by the carrier whose name appears at the top of the sheet and concurred in by the other pipe line companies named below as connecting carriers?

A. Yes sir.

Q. That is the regular course, is it not, as to Interstate tariffs, under the rules of the Interstate Commerce Commission?

A. Yes sir.

Q. My attention is called to the letters and words "F X 3, No. 3" and "F X 3 No. 4," which appear on the face of Plaintiff's Exhibit 15 for Identification, and similar words and figures appearing on the other tariffs. Will you please explain what those mean, if you know?

455 A. I am not entirely familiar with that part.

Q. You do not know about that?
A. No sir.

Mr. Crawford: Very well, I will have that explained by another witness.

Q. Referring again to Plaintiff's Exhibit 7 for Identification, which is I. C. C. No. 33, joint tariff of the Prairie Pipe Line Company in connection with the other carriers who are named upon its face, by the transportation of oil from points in Kansas and Oklahoma to Bayonne and Bay Way, New Jersey, what was the rate per barrel provided for in that tariff?

A. The rate was seventy cents per barrel.

Q. And was that the rate which was received for the shipments mentioned in your table Plaintiff's Exhibit 4, sheet 1, which were made under that tariff?

Q. Our rate is a portion of that rate.

Q. No, I did not ask what your rate was; I asked whether that was the rate which was charged under those shipments, for the through shipments?

A. Yes sir.

Q. That is, it was seventy cents from the point of origin either in Kansas or Oklahoma, via the route which you yourself have already traced and which is indicated on this tariff, to either
456 Bayonne or Bay Way?

A. Yes sir.

Q. Of that seventy cents what part did your company receive per barrel, as its compensation for the transportation of that oil through the lines of The Eureka Pipe Line Company; that is I. C. C. 33 we are talking about?

A. The Eureka's portion of that rate was $.0231.

Q. That is, you mean two and thirty-one hundredths cents per barrel?

A. Yes sir, per barrel.

Q. For the entire service rendered by your company in the transportation of that particular oil?

A. Yes sir.

Q. In like manner, referring again to Plaintiff's Exhibit 8 for Identification, which is I. C. C. No. 30, tariff issued by the Prairie Pipe Line Company jointly with other carriers, from points in Kansas and Oklahoma to Bayonne and Bay Way, what was the through rate on shipments made under that tariff?

A. Seventy cents per barrel.

Q. And of that seventy cents per barrel what part did you get for the work done by your company in transporting that oil through West Virginia?

A. The Eureka's portion of that was $.0206 per barrel.

Q. I show you Plaintiff's Exhibit 9 for Identification,
457 which is a tariff of the Prairie Pipe Line Company jointly with other carriers, from Tiffin Station, Texas, to Bayonne and Bay Way, New Jersey. We seem to have overlooked that some-

how or other. Please trace the course on the map, Exhibit 32, First Map, of the oil moved under this tariff.

A. The oil moved from Tiffin Station, Texas through the line of the Prairie Pipe Line Company, through the States of Texas and Oklahoma to Drumwright, Oklahoma.

Q. There appears to be no connection between Drumwright and the more northerly part of the lines of the Prairie Pipe Line Company, except through the line of the Oklahoma Pipe Line Company, and that name does not appear upon this tariff Plaintiff's Exhibit 9 for Identification. What must have been the facts, then, in regard to those shipments; how did they get into the main northerly line of the Prairie Pipe Line Company?

A. They moved through lines of the Prairie Pipe Line Company that are not indicated on this map, Exhibit 32, to the main lines of the Prairie Pipe Line Company, north through the State of Oklahoma, from Drumwright, Oklahoma by Bartlesville, Oklahoma, thence via the Prairie Pipe Line Company through the States of Kansas and Missouri, to Wood River, Illinois, thence via Iillinois Pipe Line Company through Illinois and Indiana via Bluff-
458 ton, Indiana; thence via Illinois Pipe Line Company through Indiana and Ohio to Negley, Ohio; thence via South West Pennsylvania Pipe Lines via Cook's Ferry and Ewings to the West Virginia State line; thence via The Eureka Pipe Line Company via Morgantown through the State of West Virginia to the Pennsylvania State line connecting with the Southern Pipe Line Company; thence via the Southern Pipe Line Company to Millway, Pennsylvania, connecting with the National Transit Company; thence via the National Transit Company to Centerbridge, Pennsylvania, connecting with the lines of the Tuscarora Oil Company, Limited; thence via Tuscarora Oil Company through New Jersey to Bayonne.

Q. Have you now had added to this Map Plaintiff's Exhibit 32, First Map, a line between Manuel, Oklahoma and Bartlesville, Oklahoma? If so state what it represents?

A. I have. They represent the line of the Prairie Pipe Line Company.

Q. Then did the oil which was moved under Plaintiff's Exhibit 9 for Identification, just referred to and originating at Tiffin Station, Texas, pass through that portion of the line of the Prairie Pipe Line Company to Bartlesville and so on east through the main line?

A. It did.

Q. What was the through rate on the shipments made under this Plaintiff's Exhibit 9 for Identification?

459 A. The through rate was $1.00 per barrel.

Q. From Tiffin Station, Texas, to Bayonne or Bay Way, New Jersey, as the case might be?

A. Yes sir.

Q. How much of that rate came to The Eureka Pipe Line Company for the portion of the transportation which it handled?

A. The Eureka's portion of the through rate was $.0231 per barrel.

Q. And was that all that your company received per barrel for transporting any of the oil which came under that tariff?

A. It was.

Q. Now, without going into quite so much detail, you testified to deliveries made of oil which was transported under Plaintiff's Exhibit 10 for Identification, the through rate of which was seventy cents, was it not?

A. Yes, sir.

Q. The share of The Eureka Pipe Line Company in the oil transported under that tariff was $.0199, was it not?

A. It was.

Q. Similarly of Plaintiff's Exhibit 12 for Identification, which is I. C. C. No. 17, of the Prairie, the share which your company received was $.0221, was it not?

A. Yes sir.

Q. And generally, of all the tariffs which are shown in
460 this table in the middle portion of sheet 1 of Plaintiff's Exhibit 4, the proportion of the through rates which your company received is that shown in the column under the word "rate" is it not?

A. Yes sir.

Q. And is it true that upon all of those shipments, your company received no gathering charge?

A. We received no gathering charge.

Q. And they received no other compensation whatever except that which is set down in that column under "rate"?

A. And no other compensation except that rate.

Q. Have you computed, or if not will you compute, the total number of barrels of oil shown on this table Plaintiff's Exhibit 4, sheet 1, transported by your company at a total compensation of 2.54 cents per barrel or less?

A. Yes sir, I have those figures here.

Q. Please mention the items which you take in, and the total.

A. There is an item of 3,728,665.65 barrels at .0231; 1,190,-661.96 barrels at .0206; 496,135.95 barrels at .0231; 124, 028.98 barrels at .0199; 1,983,894.94 barrels at .0221; 297,577.14
461 barrels at .0254. That is a total number of barrels of 7,820,-964.62.

Q. Have you figured what the average receipts per barrel for those shipments were?

A. Yes sir.

Q. Will you please state it?

A. $.0225.

Q. Or, say, two and a quarter cents?

A. Two and a quarter cents per barrel.

Q. So that what you mean to testify, in brief, is that on a total amount of 7,820,964.62 barrels of oil which you transported during the twelve months ending June 30th, 1919, your company received as its sole compensation for transporting and delivering the same an average of two and one quarter cents per barrel?

A. Yes sir.

Q. The total amounts which your company received in dollars, are shown in the last column on sheet 1 of Exhibit 4, are they not, referring for the present only to that sheet?

A. Yes sir.

Q. And each respective amount in that column is made up by multiplying the corresponding number of barrels by the corresponding rate as given in the first and second columns there, is that so?

A. Yes sir.

462 Q. I call your attention to Plaintiff's Exhibit 19 for Identification, which is a joint tariff, I. C. C. No. 58, issued by The Eureka Pipe Line Company in connection with the Pure Oil Pipe Line Company, purporting to cover shipments from Cabin Creek Station, West Virginia, to Marcus Hook, Pennsylvania. I think you have testified that that is the tariff under which the shipment of 229,099.60 indicated in the last table at the bottom of sheet 1 of Plaintiff's Exhibit 4 was moved?

A. Yes sir.

Q. What was the total compensation on that transportation?

A. The total through rate is thirty-three cents per barrel.

Q. That is the rate upon which that oil moved, is it?

A. Yes sir.

Q. What was the proportion of that through rate which your company received for its services in transporting the oil?

A. The Eureka received $.1334 per barrel.

Q. That is 13.34 cents, is it?

A. Yes sir.

Q. From what point to what point did your company transport the oil?

A. That was transported from Cabin Creek, West Virginia to the Pure Oil Company near Morgantown and delivered to them.

Q. It is the beginning of the green line, is it not, as shown
463 on Plaintiff's Exhibit 3, Third Map, a little way west of Morgantown?

A. Yes sir.

Q. There are a number of other tariffs issued by The Eureka Pipe Line Company in conjunction with other carriers, marked here for identification, from various points in West Virginia to various points beyond West Virginia, and I assume that what you have testified to as to other I. C. C. tariffs, is substantially true as to these; that is, that the oil moved under them between the points named at the rates shown on the face?

A. Yes sir.

Q. Under their joint tariffs?

A. Yes sir.

Mr. Avis: At this point I would like to make a request.

Mr. Crawford: Yes, certainly.

Mr. Avis: I would like for the witness to be prepared to furnish or to give the quantities of oil that move from the various stations in West Virginia on the joint tariffs issued respectively by The Eureka Pipe Line Company.

Mr. Crawford: You mean from every station separately?

Mr. Avis: Yes sir.

464 The Witness: I do not think I can do that.

Mr. Crawford: That is rather a large contract. Possibly you might——

Mr. Avis: I don't think so. As I understand it, the major quantity of your oil is moved on I. C. C. tariffs issued by you from Morgantown, and the quantities that move from the other points are very small. For instance, from Cabin Creek you show here the quantities on this Exhibit 4. Now I notice that some of your tariffs show that quantities moved from a few other places, and as I understand it, the quantities are comparatively small.

Mr. Crawford: We will give you all the information we can.

Mr. Avis: For instance, you only have a few stations here from which oil moves on I. C. C. tariffs.

Mr. Crawford: Do you limit your request to the stations which are named on the face of the tariffs?

Mr. Avis: Yes, the quantities that they moved from those stations.

Mr. Crawford: The stations named on the face of the I. C. C. tariffs; that is what you are asking?

Mr. Avis: Yes sir, filed by The Eureka Pipe Line Company, issued by The Eureka Pipe Line Company.

Mr. Crawford: If we can get that for you——

465 Mr. Avis: I do not care anything about the destination. For instance, you had some from Ball, West Virginia that goes to Franklin Station, also some from Olean, New York and other places. I do not want to separate them. I just want to know how much moves on the tariffs from Bell, how much moves on tariffs from Brice, etc. I do not care anything about the point of destination.

Mr. Crawford: If we can get it we will get it for you.

Mr. Avis: You have a memorandum of how much moves from Cabin Creek Station. You eliminate that tariff, and there are only about six, seven or eight other places. The quantity that moves from those stations on joint I. C. C. tariffs, those solely, not on any other tariff or local tariff.

(There followed discussion off the record as to exactly what Mr. Avis desired.)

Mr. Crawford: Will you make your request as definite as you can, please, Mr. Avis?

Mr. Avis: I want to know the total quantity of oil that moves from the various stations in West Virginia named in the I. C. C. joint tariffs which were issued by The Eureka Pipe Line Company and have been marked for identification; and in explaining my request I note that several of the tariffs just referred to show the originating point as being Bula, West Virginia. Now I want

466 to know the total amounts or quantities of oil that moved from Bula, West Virginia on joint tariffs. I do not desire it to be separated by destination or destinations and this illustration will explain how I want it from the other stations.

Mr. Crawford: The deliveries you want are those which actually took place in the twelve months ending June 30th, 1919?

Mr. Avis: Yes sir, if that is the most convenient twelve months for you to give.

Mr. Crawford: You spoke in the present tense in one or two occasions.

Mr. Avis: I referred to that.

Mr. Crawford: Those are what you want, if we can get them?

Mr. Avis: Yes, or any year; preferably that year. There are just seven or eight places at which you originate oil on I. C. C., and I want to know how much went from Morgantown the total amount that went from Bula, the total amount that went from Downs, the total amount from Cabin Creek and so on, on I. C. C.

By Mr. Crawford:

Q. Mr. Swisher, I show you a paper which is marked I. C.
467 C. No. 160, P. S. C. W. Va., No. 8, The Eureka Pipe Line Company, local tariff, and ask you to state what the letters "P. S. C." mean there?

A. "P. S. C." means Public Service Commission, West Virginia.

Q. "I. C. C.," of course, means the Interstate Commerce Commission?

A. Yes sir.

Q. And what is this tariff, when did it take effect?

A. That tariff took effect on September 20, 1919.

Q. Where was it filed?

A. It was filed with the I. C. C., the Interstate Commerce Commission, and also the Public Service Commission.

Mr. Avis: Of West Virginia.

The Witness: Of West Virginia.

Q. That tariff changes the gathering rate which your company is permitted to charge for gathering and transporting oil from wells to delivery points within the State of West Virginia, does it not?

A. Yes sir.

Q. Whereas formerly that charge was twenty cents, it is by this tariff increased to thirty cents?

A. Yes sir.

Q. And the statement at the top, that this cancelled I. C. C. number 151 and P. S. C. W. Va. No. 6 refers, I suppose, to a preceding tariff of the same character?

468 A. Yes sir.

Q. Which called for a gathering charge of twenty cents?

A. Yes sir.

Q. Since September 20, 1919, your company has been permitted to charge, and I suppose has charged, for the services indicated on this tariff, thirty cents per barrel?

A. Yes sir.

Q. But did that thirty cents charge have to do with any part of

the oil which was transported during the twelve months ending June 30, 1919?

A. It did not.

Mr. Crawford: I ask that that be marked for identification.

Paper marked Plaintiff's Exhibit 33 for Identification of this date.

Q. My attention has been called to the name of a carrier which you have not mentioned, nor has any one else so far as I know in this case, the Yarhola Pipe Line Company, which appears on Plaintiff's Exhibit 10 for Identification, which is I. C. C. No. 58 of the Prairie Pipe Line Company jointly with other carriers. I hand you that exhibit and ask you to indicate, if you can, where the line of that Yarhola Pipe Line Company is? It appears not to be indicated on this map Plaintiff's Exhibit 32, First Map.

469 A. The line of the Yarhola Pipe Line Company does not appear to be indicated on this map, Plaintiff's Exhibit 32, sheet 1. I will endeavor to ascertain the exact location of the line, and will, with the permission of counsel, have it placed upon the map before the next hearing.

Mr. Avis: That is satisfactory.

Mr. Crawford: When the line has been so placed I will explain it and connect it up with the other testimony.

Mr. Avis: That is entirely agreeable.

Q. There are two or three of these Eureka Pipe Line tariffs about which I want to ask you. I hand you Plaintiff's Exhibit 28 for Identification, which is I. C. C. No. 146, issued by The Eureka Pipe Line Company in conjunction with other companies from various points in West Virginia to Olean, New York. Where is Olean, New York?

A. Olean is in the southwestern part of New York.

Q. And is shown on this map, Plaintiff's Exhibit 32, First Map?

A. Yes sir.

Q. You transport oil originating in West Virginia, which is forwarded under this tariff Plaintiff's Exhibit 28 for Identification, to Olean, New York; or you did so forward, it, did you not?

A. Yes sir.

470 Q. During the twelve months we spoke about?

A. Yes sir.

Q. Now will you trace the course of shipment of the oil so forwarded?

A. All the points are not named on this map, but the course of the shipment forward would be north, from the West Virginia State line via——

Q. Crossing where?

A. Crossing at several of these points.

Q. Crossing near Littleton, does it not?

A. Some of the oil might. There are several points there. The oil could move via Littleton, West Virginia, Bula, West Virginia, Downs, West Virginia or Brice, West Virginia.

Q. And in each case it would cross the State line to Pennsylvania, would it?

A. It would.

Q. And get into the system of the South West Pennsylvania Pipe Lines?

A. The South West Pennsylvania Pipe Lines, yes sir.

Q. Then——

A. Moving northward via the National Transit Company through Nedsky Station and Bear Creek Station, thence northward via the lines of the Northern Pipe Line Company to the New York State line, where it is delivered to the New York Transit Company, which makes the final delivery at Olean.

471 Q. And the total through rate on those shipments was how much?

A. Thirty cents per barrel.

Q. Of which your company received how much?

A. $.0362 per barrel.

Q. Looking for a moment at sheet 2, Plaintiff's Exhibit 4, at the column marked "rate" which gives, as I understand, The Eureka's portion of the through rates on oil produced in West Virginia and delivered to other carriers for further transportation outside the State of West Virginia—that is right, is it not?

A. Yes sir.

Q. I notice that in no instance did The Eureka's portion of the through rate amount to as much as five cents. I am correct, am I not?

A. That is correct.

Q. And that on the largest item at the head, 1,398,267.72 barrels, the rate was less than three cents?

A. Yes sir.

Q. And the same is true on several other large items below, is it not?

A. Yes sir.

Q. So that in the aggregate over two million barrels in that table paid the Eureka for its services in transportation less than three cents per barrel?

472 A. Yes sir.

Mr. Crawford: Now, Captain Avis, I am through with this subject, and the next subject will take up considerable time, and I suggest we adjourn now, if agreeable.

Mr. Avis: That is perfectly agreeable.

Mr. Crawford: Very well, we will adjourn until December 1st?

Mr. Avis: Yes sir. We shall not prepare ourselves for cross-examination yet; you are not through with Mr. Swisher?

Mr. Crawford: Oh, no, not nearly through.

Adjourned to Monday, December 1, 1919, at 10:15 A. M., at the same place.

Last Plaintiff's Exhibit No. 33.

473 THE EUREKA PIPE LINE COMPANY

VS.

WALTER S. HALLANAN et als.

New York, December 1, 1919.

Met pursuant to adjournment.

Appearances:

For the Plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.
For the Defendants: S. B. Avis, W. Gordon Mathews.

Mr. Crawford: Mr. Avis and Mr. Mathews, we have here a witness from the Pure Oil Pipe Line Company, and a witness from the West Virginia Pipe Line Company, and we ask your permission to take Mr. Swisher off the stand for a few moments, and take their testimony, which will be very short. You do not object to that, I suppose?
Mr. Mathews: No indeed.

W. DIXON ELLIS, a witness called on behalf of the plaintiff, being duly sworn testified as follows:

Direct examination.

By Mr. Crawford:

Q. What is your full name?
A. W. Dixon Ellis.
474 Q. Mr. Ellis, where do you reside?
A. New York City.
Q. Are you connected with the West Virginia Pipe Line Company?
A. I am.
Q. Under the laws of what state is that corporation organized?
A. Pennsylvania.
Q. And what is your relation to it officially?
A. President of the Company.
Q. Were you president during the twelve months ending June 30, 1919?
A. Yes sir.
Q. What are your duties as president, in a general way?
A. You might say everything, pretty nearly; general direction.
Q. General direction?
A. I mean to say, general direction.
Q. You have general direction of the business of the company?
A. Yes.
Q. In this case brought by The Eureka Pipe Line Company

against Walter S. Hallanan and another, it has been testified that during the twelve months ending June 30, 1919, The Eureka Pipe Line Company gathered in West Virginia and delivered to your
475 company at Littleton, certain amounts of oil which aggregate 131,811.67 barrels. Without holding you down to the exact fraction of a barrel, are you aware of such deliveries during that period?

A. Yes.

Q. Please state what was done by your company with the oil delivered to it during those twelve months by The Eureka Pipe Line Company at Littleton?

A. It was pumped into the State of Pennsylvania from Littleton, and sent to the various refineries that we supply.

Q. And how soon after it was received by you at Littleton was it pumped into the State of Pennsylvania?

A. As soon as it was practicable to do so.

Q. Would that mean a few minutes or hours, some hours or what?

A. It might mean from one hour to a week or two weeks.

Q. What do you mean by "as soon as practicable"?

A. Why, as soon as the line was free to take it.

Q. As soon as your line was free to take it?

A. Yes sir.

Q. And it was not held at Littleton any longer than just enough to get capacity in your lines to forward it, is that right?

Mr. Avis: We object to that question as being leading.
476 Mr. Crawford: You may answer the question. Read the question.

(The question was read.)

A. That is right.

Mr. Avis: We object to the answer and move to strike it out.

Q. In regard to this oil and the various deliveries that were comprised in it, how did your company acquire title to the oil, or rights to deliveries?

A. We purchased it from the producers, through certificates they had obtained from The Eureka Pipe Line Company—I mean, credit balances they had received or obtained from The Eureka Pipe Line Company.

Q. And then did you issue orders to The Eureka Pipe Line Company as to what to do with it?

A. Yes sir.

Q. And those orders, as I understand, were that it should be delivered to you at Littleton?

A. Yes.

Q. What was the intention or purpose of the West Virginia Pipe Line Company, at the time it ordered those deliveries, in respect to the final destination of the oil?

A. An intention to obtain it for our refining use.

477 Q. Where?

A. In four or five refineries in Pennsylvania.

Q. I do not think you have quite answered my question, and I will ask the stenographer to read it again.

(Question read, "What was the intention or purpose of the West Virginia Pipe Line Company, at the time it ordered those deliveries, in respect to the final destination of the oil?")

Q. I did not ask you as to its use, I asked you as to its destination. What was the original purpose as to the destination of the oil?

A. To refineries, for manufacturing lubricating oil.

Q. Pardon me. I do not say "use" now. You understand the meaning of "destination."

A. Destination?

Q. Destination means the place.

A. You mean the place? Oh, yes.

Q. Destination means a place. Very well, if my question is ambiguous I will change it. What was your intention, I mean what was the intention of your company, as to the place to which this oil should go, when you gave The Eureka Pipe Line Company orders for its delivery?

A. To the refineries, that the different members of the company are interested in, in Warren, Pennsylvania, Butler, Coraopolis.

478 Q. At any rate, it was the intention and purpose that the oil should all proceed to Pennsylvania?

A. To some points in Pennsylvania.

Mr. Avis: We object to the question.

The Witness: Pennsylvania refineries.

Mr. Avis: Just one moment. We object to that question as leading.

Q. To Pennsylvania refineries, but they were situated in Pennsylvania, were they not?

Mr. Avis: Same objection to this same question.

A. Yes sir.

Q. Was there any intention or purpose that any of that oil should remain within the State of West Virginia longer than was necessary for purposes of transportation?

A. There was not.

Q. And did, in fact, any of it remain in your possession, I mean the possession of your company, within the State of West Virginia, longer than was necessary for purposes of transportation?

A. It did not.

Mr. Mathews: We object to the question and answer also.

479 By Mr. Mathews:

Q. If you know?

A. It did not.

Mr. Crawford: You may cross examine.

Cross-examination.

By Mr. Avis:

Q. This oil that you refer to was delivered to you at Littleton, West Virginia?
A. Yes sir.
Q. Prior to its delivery at Littleton, it was not moving on a tariff, was it?
A. No sir, Oh, I beg your pardon, what is that?
Q. (Pending question read.)
A. I do not know anything about that at all. I could not tell you. I cannot answer that. I can only guess.
Q. Have you any joint tariffs in connection with The Eureka Pipe Line Company?
A. No sir, we are an entirely independent concern.
Q. Entirely independent. Then at the time of the delivery of this 131,811.67 barrels it was not moving on a tariff or joint tariff between you——
A. Not after we received it, it was not.
Q. Yes. Well, you do not know of it moving on any before you received it, do you?
A. I do not.
480 Q. As a matter of fact, it was simply delivered in your own tanks?
A. That is right.
Q. To be transported in your own lines for the use in your own refineries?
A. That is right.
Q. That is correct. And you exercised absolute control over that oil by sending it to any refiner or any place you pleased, did you not?
A. No, I did not.

Mr. Crawford: Read that question.
(The last question was read.)

The Witness: Oh, I did not hear your question. Send it to any refiner I please?
Q. Yes, or your company pleases?
A. No, I am bound just to send it to our own refineries, that are interested in the company.
Q. What I mean is to your own refineries, to any one of these refineries of yours?
A. Oh, yes; yes; any one of the refineries interested in the company.
Q. And you exercise discretion in the distribution of it?
A. Yes sir.
Q. That is not by any arrangement with The Eureka Pipe
481 Line Company you make these deliveries?
A. Not at all.
Q. It is separate and distinct?
A. They are competitors, friendly, you might say.

Mr. Crawford: I object to that.

The Witness: Friendly competitors.

Mr. Crawford: Pardon me a moment. I move to strike out the testimony of the witness about competitors, as not responsive and as incompetent, and calling for a conclusion of law.

Mr. Mathews: We have no objection to that part of it being stricken out.

By Mr. Avis:

Q. You spoke of holding this oil sometimes a day and sometimes two weeks. What controls you in holding that oil a day or two weeks at Littleton?

A. Our ability to pump it; as soon as possible.

Q. Well, your deliveries there were 131,811 barrels of oil. What is your tankage capacity at that place?

A. I think we have got a 5,000 barrel tank, and a three, but I am not positive.

Q. You mean there may be three 5,000 barrel tanks?

A. What is that?

Q. There may be three 5,000 barrel tanks?

482 A. No, I think there are two tanks there, one five and one three. Now I may be mistaken, though; there may be a ten and a five.

Q. I am trying to ascertain what is your guiding star when you start that oil on its journey; wait until the tanks get full, or what controls you, in the further transportation of that oil from Littleton?

A. They generally filled the tank up and then we forward it on

Mr. Crawford: What is that answer?

(The answer was read.)

Q. Well, you mean you would get some oil at Littleton, and then you would not start it on its further journey until you got the tanks filled up?

A. If I understand you aright, yes.

Q. I hope you understand me aright.

A. Well, it is kind of an ambiguous question.

Q. Well, I am trying to find out what controls you in the further transportation of that oil. You said that sometimes you held it a day and sometimes you held it two weeks. Now, why would you sometimes hold it two weeks?

A. Inability to pump, from one cause or another.

Q. What inability would that be?

A. We have other oil we are taking in, you know; a great

483 deal of other oil we are taking in in connection with this, of our own oil that we gather ourselves.

Q. But it was taken in the same tanks with the oil that you gather yourselves, was it not?

A. Not at the same time, no; we could not measure it if they did.

Q. Do you take a different grade of oil?

A. No, it is virtually the same grade of oil.

Q. Pennsylvania grade?
A. No, it is what we know as a light West Virginia and Ohio.
Q. Well, would you not keep one tank for one grade and another tank for another grade of oil?
A. No, we keep one tank for receiving our own oil, and another for receiving The Eureka Line's oil.
Q. But that was your oil, too, after you got it from The Eureka Company, was it not, at Littleton?
A. Yes.
Q. And the other was your oil at Littleton?
A. Yes.
Q. Now what I am trying to ascertain is, how you kept that oil separate and why you kept it separate, and why you would keep it there sometimes two weeks?
A. First on account of measuring it.
484 Q. I did not hear you?
A. To get the measure.
Q. Of the oil?
A. Yes; and next off, to pump it. There is a double question.
Q. Why could you not pump it every day?
A. Because our man has the other oil to take care of, our pumper does, and could not do it at the same time.

By Mr. Crawford:

Q. What do you mean by the other oil?
A. Why, oil that we are gathering ourselves.

By Mr. Avis:

Q. Well, what do you mean by the West Virginia light grade of oil? I am not familiar with that grade of oil as distinguished from the Pennsylvania grade?
A. Well, in West Virginia, all other fields, there is some very different grades of oil, dark and light oil, and we do not as a rule gather the dark. They gather only the light.
Q. You gather that yourselves?
A. Yes.
Q. And do you take that to Littleton?
A. And we always try to purchase that, too.
Q. And you put that in this tank. Now, the oil that you get from The Eureka Pipe Line Company, that is delivered to you
485 in your tank at Littleton, is an entirely different grade of oil, is it?
A. No, the same grade.
Q. Then all the oil that you get there is the same grade, the kind that you get from The Eureka and the kind that you get from the Pipe Line Company?
A. Yes.

Mr. Crawford: And the what?

Q. And the kind you gather yourself?

A. Yes.

Q. Then what do you mean by the remark a while ago when you said that you kept it separate because you handled two grades of oil and did not want to mix them together?

A. I do not remember saying that. That is what you said.

Q. I understood you to say that.

A. That is what you said, but I did not say that.

Mr. Avis: I may be utterly confused about that in some respect. I would like to get that straight. I certainly thought you said you handled two grades of oil.

The Witness: No, it is for pumping purposes only, we keep it separate, and for measuring.

Q. Then it is only kept there for pumping and measuring purposes?

A. That is right.

486 Mr. Crawford: I object to the question, because the witness testified that it was kept separate for those purposes.

Mr. Mathews: Put the word "separately" in there, and let him answer.

Q. Then it is only kept separately for pumping and measuring purposes?

A. Only for pumping and measuring purposes? Yes.

Q. Yes. Well, will you not please explain how you mean to be kept separately for pumping and measuring purposes?

A. We cannot receive our oil from our own lines at the same time we are pumping into theirs, and get measurement.

Q. Then do they deliver in a separate tank from the tank that you put the oil in, that you gather?

A. Sometimes it is one, sometimes in the other.

Q. But it is never mixed together?

A. Yes, it may be mixed together.

Q. At Littleton?

A. It may be mixed, yes.

Q. Well, does not the quantity of oil that you have on hand there determine whether you will start it further on or hold it there for longer than the day?

A. Does not what?

Q. Does not the quantity of oil that you have on hand in
487 those tanks determine the question of your pumping it and holding it for a day or two weeks, as you suggested?

A. Not entirely.

Q. What else controls it, besides pumping and measuring?

A. I have told you already. I have told you.

Q. What is the capacity of your pump there, per day?

A. Well, it will put about 60,000 barrels through a three inch pipe.

Q. A day?

A. Of twenty-four hours.

Q. In twenty-four hours. Well, now, about how much oil did

your company gather during the period that you referred to, namely the period ending June 30, 1919?

A. In what, in the State of West Virginia?

Q. West Virginia, yes.

A. Not including Ohio oil?

Q. I mean the oil, anything that you handled out of Littleton, out of your tanks at Littleton?

A. From both Ohio and West Virginia?

By Mr. Mathews:

Q. You do not get much from West Virginia, from The Eureka Pipe Line Company.

A. You want what is separate from West Virginia?

Q. We want to know what is separate from what you
488 receive from The Eureka Pipe Line Company?

A. I can only give you a guess now, without referring to the records. I did not know as you would ask those questions, or I would have prepared myself for them.

Mr. Avis: Well, we would like to have that information?

Mr. Crawford: I do not think there ought to be a guess.

The Witness: It would be pretty difficult to obtain that anyway, because our Ohio oil is mixed in with the West Virginia oil, before we get it at Littleton.

By Mr. Avis:

Q. Whereabout is that mixed in with your West Virginia oil?

A. Why, at Ben's Run, on the Ohio River.

Q. At Ben's Run?

A. Just above St. Mary's.

Q. See if you can make it plain. As I understand you, you get certain oil that you have already referred to, from The Eureka Pipe Line Company, of the West Virginia grade of oil; that is true, is it not?

A. Surely.

Q. Now, do you gather oil that is produced in West Virginia?

489 A. Yes, sir.

Q. Now, all the oil that you gather that is produced in West Virginia is put in these tanks at Littleton, is it?

A. Goes through them.

Q. Well, I say it is left there?

A. Put in other tanks first.

Q. Yes, and then it goes to these tanks before it starts out of Littleton?

A. That is right.

Q. Now, do you put any other oil in there from any other state, that is mixed with this oil that you have just referred to, before it gets to Littleton?

A. Yes, Ohio oil.

Q. What grade of oil is that?
A. Similar.
Q. The same grade, or similar grade?
A. Virtually, similar grade.
Q. That goes into these same tanks at Littleton?
A. Yes.
Q. And from Littleton you pump it out, as you say, in your own line to your own refineries?
A. Surely.
Q. What I am trying to get at is, about how much oil of this grade that you gathered in West Virginia, that was delivered
490 to you by The Eureka Pipe Line Company, and that you got from Ohio, was handled through this Littleton Station?
A. All of it.
Q. All of it. Well, about how much of it? I am trying to get some idea of the quantity of oil. I do not expect you to be exact.
A. Do you want me to guess?
Q. No, sir, I would like to have more than a guess.

Mr. Crawford: I object to the witness' guessing. If the witness knows and can give an approximately correct answer I do not object to that.
Mr. Avis: That is what I was saying, Mr. Crawford.
Mr. Crawford: But if it is only a question of a guess, I object to it as incompetent.
The Witness: Let us see, the question was this——
Mr. Crawford: This gentlemen here (indicating) is the Vice-President of the company, and I have no objection to the witness referring to him, if you have not.
Mr. Avis: No, I have not a bit, gentlemen. We are just trying to get the facts if you know them.

(There followed informal discussion off the record.)

By Mr. Avis:

Q. Where is your Ohio and West Virginia oil first mixed together?
491 A. I answered you. You asked that awhile ago.
Q. At Ben's Run?
A. Yes.
Q. And then it goes on to Littleton?
A. Yes sir.

Mr. Avis: Now then, I think we can make ourselves clear. We will ask for this information; the total amount of oil handled out of the Littleton Station by your company in your own lines, from your own tanks, for the year ending June 30th, 1919; and when we get that I would like to ask the witness a question or two on it, that I cannot ask until I get that.
Mr. Crawford: I do not understand that that is your right on cross examination, Mr. Avis. We present this witness to testify according to his knowledge. Now he has so testified.

Mr. Avis: No sir, he does not have any knowledge, Mr. Crawford.

Mr. Crawford: Pardon me one moment. He has testified to his knowledge. I do not know anything which compels us to have him go—he is not under our control—and have us bring him back on the stand as to other information, which you can obtain yourself as a part of your case. I do not say that we shall not do so now,
492 I reserve the right, but I deny that you have any right to make any such demand where this witness is not one of our employees or in our control. We have called him as an unprejudiced witness, and he testifies to the extent of his knowledge.

Mr. Avis: Do you want that statement on the record?

Mr. Crawford: Yes.

Mr. Avis: Then I want this statement on the record. When you produce a witness you vouch for him, and you vouch for his knowledge of the facts about which he is being questioned; and if he has some knowledge in his records that he has not brought with him, it seems to me that we are certainly entitled to that knowledge on cross examination. Under those circumstances I am going to ask the witness one question:

Q. As a matter of fact you have no knowledge of your own as to the quantity of oil your company gets from The Eureka Pipe Line Company, delivered to you at Littleton, have you?

A. Not the exact quantity.

Q. Yes. And you cannot give us approximately—or have you any knowledge approximately, except what you have been told, since you got here to-day, about the quantity that is delivered to you by The Eureka Pipe Line Company?

A. Why, I have every reason to suppose their figures are
493 correct. I can check them up and find out if they are.

Q. That is not the question. The question that is asked you is, have you any independent knowledge of your own as to the number of barrels of oil that are delivered to your company at Littleton, West Virginia, by The Eureka Pipe Line Company?

A. I think there is no doubt about our having received in the neighborhod of that amount.

Q. How much?

A. Of that amount that he mentioned there.

Q. Do you not recall the amount?

A. No, I do not.

Q. Then as a matter of fact you are just accepting the other figures as being correct; is not that true?

A. That is right.

Q. And are not speaking of your own knowledge?

A. No sir, not of my own knowledge, as to the exact figures.

Q. Now you cannot give us any approximate idea of the quantity of oil which your company gathered, deposited in tanks at Littleton, and transported from Littleton on, can you?

A. I would say it exceeds at least 120,000 barrels in that year.

Q. Last year. How much greater than 120,000 barrels would you say?

A. That I cannot say, without looking at our records.

494 Q. Now let us assume that you did transport 120,000 barrels, gathered by yourself, and about 131,000 barrels gathered by The Eureka and delivered to you at Littleton. On that assumption the total quantity would be about 255,000, would it not, making the calculation?

A. If you have figured correctly.

Q. Well, 120,000 and 131,000, in round numbers. Now if the capacity of your pump there is 60,000 barrels a day, please tell me why it would be necessary for you to hold that oil there sometimes two weeks?

A. I have already told you.

Q. Well, what condition?

A. The pump might not be in order, ready to do the pumping, and the pumper might be busy in gathering oil, our own oil. In that case he could not do both.

Q. Well then, it is just held there as a matter of your own convenience?

A. Pumping our own oil I would say, gathering and pumping our own oil.

495 Q. Well, the oil is stored at Littleton, as a matter of fact, for your own convenience, is it not?

A. That is right.

Q. And you transport it when it suits your convenience, when it pumps well or your pumper is not doing something else, is that not true?

A. Yes.

Mr. Avis: That is all.

Redirect examination.

By Mr. Crawford:

Q. You have stated, Mr. Ellis, that the capacity of your pump is 60,000 barrels per day or twenty-four hours, did you not?

A. Yes, approximately.

Q. You said——

Mr. Mathews: Let him finish.

The Witness: I had better say approximately, in that neighborhood.

Q. You said that that was what passed through a three inch pipe, didn't you?

A. Yes.

Q. Is that what you have there, a three inch pipe?

A. Yes sir.

Q. Now, are you not seriously in error in regard to that amount, that 60,000 barrels?

496 Mr. Avis: We object, of course, to cross examining your own witness, Mr. Crawford.

A. I do not think I am.

Mr. Crawford: I think you have a perfect right to cross examine on a matter of accuracy, where it is not a question of credibility.

Mr. Mathews: Well, he says he does not think he is.

Mr. Avis: He says he does not think he is wrong.

The Witness: I beg your pardon; yes, I guess I am wrong. I meant 60,000 barrels in a month. Almost all of our capacity is regulated by the month. I did slip my trolley then, I must admit.

Q. Then if that was the case, what would you now testify as to the amount of the daily capacity of your pump; I mean, the twenty-four hour capacity?

A. Well, divide that by thirty.

Q. Well, you divide it.

Mr. Avis: There are not thirty working days in a month. But go ahead.

Q. Well, you answer that question; I am not testifying.

A. Well, divided by a month, then, the days in a month, long or short.

Q. Do not allow yourself, to be diverted by our more or less friendly talking across the table, Mr. Ellis. That is a way lawyers have of doing, but you answer the question I have asked,
497 what you now say is the daily capacity of your pump at Littleton?

A. I never have looked at it that way. We have always done it by the month.

Q. If the capacity is 60,000 barrels per month, does that mean an average capacity of 2,000 barrels per day, or more or less?

Mr. Avis: We object, because the witness has just said he has never looked at it by the day, and he does not know.

Mr. Crawford: That is all right, but I think the court will take judicial notice——

Mr. Avis: Not necessarily, Mr. Crawford.

Mr. Crawford (continuing): That there are a certain number of days in a month.

Mr. Avis: I know, but that does not necessarily mean that.

Mr. Crawford: I will stand on the question. First, make your objection. Now read the question to the witness.

Q. (Question read: "If the capacity is 60,000 barrels per month, does that mean an average capacity of 2,000 barrels per day, or more or less?")

Mr. Avis: We object to the question.

A. I should say it was in that neighborhood.

Q. In the neighborhood of 2,000 barrels per twenty-four hours?

498 A. Yes.

Q. That is what you now say?

A. Yes. It may do more, but that is what I have in mind.

Q. Well, how much more?

A. That I could not tell you.

Q. You cannot tell. You stated that the oils which were delivered to you by The Eureka Pipe Line Company were kept separate from those which you received through your own lines, as I understood, for the purpose of measuring and pumping; that is correct? I mean you so testified, did you not?

A. I may have, but it is more particularly for measuring.

Q. For measuring. Very well. Then will you explain what you mean by that, how the measuring is done?

A. Why, your pumper or gauger, whatever he is, comes around and measures how much oil you have got in the tanks.

Q. You mean how much, in what units?

A. In the tanks, yes.

Q. Well, in what units.

A. How many barrels you may have in the tank, of oil, and then he measures it after the delivery is made.

Q. Well now, when he makes his first measurement of the number of barrels, as a matter of fact does he not measure it by feet and inches?

A. Yes.

499 Q. He measures how many feet and inches in depth of oil there is in the tank, does he not?

A. And then reduces it to barrels.

Q. Yes, according to a regular formula?

A. Yes, a formula of measurement.

Q. Then when you say the oil is delivered, you mean the oil is brought into the tank for a certain length of time, and that is measured in the same way, by feet and inches, is it not?

Mr. Avis: We object to the question as being leading.

A. You mean The Eureka oil?

A. I mean any oil.

A. Yes, any oil is done that way.

Q. And if it be Eureka oil that has been delivered, then you ascertain the total contents of the tank and subtract the amount that was there before The Eureka oil was put in, do you not?

A. That is right.

Q. And is that what you mean by saying that the oils were kept separate for the purposes of measuring?

A. That is right.

Q. Now, without reference to the exact amount of oil that was delivered to you by The Eureka Pipe Line Company during the twelve months ending June 30, 1919, do you know whether all the oil that was so delivered, whether it was more or less, fol-

500 lowed the course to which you testified?

A. Yes.

Q. It did?

A. Yes.

Q. And you testify that all of it, whether it was more or less, was forwarded from Littleton into the State of Pennsylvania, in the manner and subject only to the delays which you have testified to here?

Mr Mathews: We object to it.

A. Yes sir.

Mr. Avis: We object to that question as leading.

Q. You spoke of oil received from the State of Ohio. That is received into your own lines, is it not?

A. That is right.

Q. You do not mean to say that that came to you through The Eureka Pipe Line Company?

A. I did not.

Q. Was there any mixture of oil received from Ohio with the oil delivered to you by The Eureka Pipe Line Company until after the latter oil had been pumped into a tank or tanks at Littleton and measured?

A. Yes, whatever was in the tanks we ourselves received, of our own oil. We mixed the two oils there at Littleton. The only place they got mixed was at Littleton.

501 Q. My question was whether this mixture took place before the measurement?

A. Before the measurement? Why no, no, certainly not. No, not before the measurement, certainly not.

Q. What I mean is, the oil was delivered to you by The Eureka Pipe Line Company at Littleton, and something was done with it until it was measured; that is so, is it not?

A. Yes.

Q. What was done with it?

A. Mixed in with whatever oil happened to be in the tank, our own oil or of their oil. There may have been a balance over at one time of their oil, or there may have been a balance over in the tank of our oil.

Q. You mean to say that it was pumped into a tank which contained other oil?

A. We never entirely empty the tanks.

Q. Before it was so pumped did you measure the oil that was already in the tank?

A. Oh, yes.

Q. And after it was pumped in did you measure the entire amount that was in the tank?

A. Yes sir.

Q. And then you subtracted one from the other to get the amount of Eureka oil that had been delivered?

502 A. Yes sir.

Q. And that is what you mean by saying that there was a mixture at Littleton?

A. That is right.

Mr. Crawford: You may cross-examine.

Recross-examination.

By Mr. Avis:

Q. Mr. Ellis, I understand you to say, after correcting your statement, that the capacity of your pump or pumps at Littleton is about 60,000 barrels a month. That is correct, is it?

A. Why, I should say that is the least.

Q. Capacity of your pumps?

A. Yes.

Q. Well, if that is the least then your capacity there would be about 720,000 barrels per annum, would it not? Twelve multiplied by 60,000?

A. Did you say 60,000 barrels a day?

Q. No, a month.

A. Oh, a month, yes.

Q. That is the least capacity?

A. Yes.

Q. And if there are twelve months in the year, 60,000 multiplied by twelve would make your capacity 720,000 barrels a year, if I have made the calculation correct?

A. That is right. I do not say that we do that.

503 Q. I understand, but you could do that if you wanted to?

A. That is my impression.

Q. Yes sir, and if it suited your convenience you could?

A. That is my impression.

Q. Now, the oil that you gather in West Virginia is mixed with the oil that you gather in Ohio before it goes to Littleton Station; that is correct, is it not?

A. Yes.

Q. Then it goes to Littleton Station, where it is further mixed with the oil that is produced in West Virginia and delivered to you by The Eureka Pipe Line Company. That is correct, is it not?

A. Yes, that is correct, to a small extent.

Q. I understand. It goes in the same tanks, though?

A. Yes.

Q. Now, do you sell or deliver any oil in West Virginia?

A. Do I sell?

Q. To anybody?

A. No, I do not.

Q. Have you any place in West Virginia, any refinery, or any place that you use any oil at all?

A. No sir.

Q. Where does your pipe line system run from?

A. That West Virginia Pipe Line system runs from Bur-

504 gettstown, southwest of Pittsburgh.

Q. You get oil from Ohio. How do you get oil from Ohio that is mixed with your West Virginia oil at Ben's Run?

A. By pipe line across the Ohio River.

Q. Your own pipe line?

A. Yes.

Q. That goes from West Virginia over the Ohio River, does it?
A. Yes, or the other way, from Ohio to West Virginia.
Q. Do you get any oil from Pennsylvania that you bring down to Littleton Station, too?
A. No sir.
Q. You have tanks in other places besides Littleton, in West Virginia; that is true, is it not?
A. Oh, yes.
Q. Now, where is the situation or location of those tanks?
A. Fallen Timber, Big Moses——

Mr. Mathews: Mr. Ellis, could you give the counties after you named the place, just at the same time?
The Witness: What is that?
Mr. Mathews: Could you give the counties in which these places are?
The Witness: No, I could not, withiout a map.
Mr. Mathews: Very well.

505 A. (continued). And Sugar Creek, Ben's Run; those are the main stations, and we have a lot of other smaller ones, feeders, that I cannot give the names of.

By Mr. Avis:

Q. But all of this oil of that grade that goes to Littleton is mixed together in these tanks, wherever it is produced, whether in Ohio, or in West Virginia or not, is not that true?
A. Yes, that is right.
Q. And you send it from Littleton to these refineries that your company controls; that is correct, is it not?
A. That is right.
Q. Mr. Ellis, I do not want to put you to——
A. (Interposing.) Not controls; I would rather say this, that our company is interested in. I would rather have it more correct, and say it is interested in. Change that "controls" to "interested in."
Q. Well, the stock ownership, the control of the stock of your company and of the refineries is in the same people, is it not?
A. Partly so.
Q. Well, is that not true, that a majority——
A. (Interposing.) Partly not; partly so and partly not.
Q. You mean that of some of the refineries the same stockholders do not control the capital stock?
506 A. Yes.
Q. How many refineries have you in all?
A. That we supply, you mean? Or do you mean just our——
Q. (Interposing.) That you supply? I will ask that.
A. Or that we have a controlling interest in?
Q. Well, how many?
A. We have two that we have a controlling interest in.
Q. That your company has a controlling interest in?
A. Yes.

Q. Now, how many do you supply that you do not have a controlling interest in?

A. Five that we are not interested in, that are interested in the West Virginia Company as owners.

Q. You mean the West Virginia Pipe Line Company?

A. Yes, as owners.

Q. But there is an affiliation among all of these refineries and your company, is there not, by stock ownership?

A. Just as I explained it, that is all.

Q. Well, your company controls two of these refineries; that is true, is it not?

A. I might say that the company does not control any of them, when it comes down to that. The West Virginia Company does not control any of them. That is the tail wagging the dog.

Q. Well, do the refineries that you refer to, two of these
507 refineries control the West Virginia?

A. The West Virginia, yes.

Q. The Pipe Line Company?

A. Yes.

Q. Then what is the connection of the other five with the West Virginia Pipe Line Company?

A. The same way, through ownership of the West Virginia Pipe Line Company.

Q. Then as a matter of fact, all of these refineries own the control of the West Virginia Pipe Line Company, is that not true?

A. Why, they all own the control? What do you mean, individually?

Q. Well, I am trying to find out.

A. They do not individually.

Q. Well, together, by affiliation?

A. Why yes, together they control it.

Q. Then they are all affiliated corporations, with the control of the stock of the West Virginia Pipe Line Company in all of these refineries. Now that is correct, is it not, Mr. Ellis?

A. Yes, that is right. I should think that is right.

Q. And when you spoke of the tail wagging the dog you meant that if I asserted that the West Virginia Pipe Line
508 Company controlled the refineries, it was the tail?

A. It would not be correct.

Q. And the refineries the dog; but I have you correct now, the dog is the refinery and the tail is the West Virginia Pipe Line Company?

A. That is right.

Q. And controlled by all these refineries?

A. That is right.

Q. Mr. Ellis, would I be asking too much, if you could let us know from your records, or give us a short statement to file with your testimony, not to bother you to come back, showing the total amount of oil handled by your company out of Littleton Station, West Virginia, during the year ending June 30, 1919?

A. I think I can do that.

Mr. Avis: We will accept the figures as furnished here as to the amount delivered to you by The Eureka Pipe Line Company, Mr. Crawford; so the witness would have nothing to look for but his own records.

The Witness: As to what is pumped out of the State? You want to know how much is pumped out of the State?

Q. How much out of the Station? Littleton Station?

A. Well, it is immediately pumped out of the State. We are right on the line, or close to the line.

Mr. Mathews: That would be the same thing.

The Witness: Yes.

509 Q. You do not pump any out of any other station out of the state, do you, except out of Littleton?

A. Oh, yes, I beg your pardon. No, the West Virginia Company does not. That is another company we are interested in.

Mr. Avis: I will like for the two officials of the West Virginia Pipe Line Company who are here, because I know it would not be very much trouble, to look up the records and give us that information.

The Witness: I have no objection.

Q. So that I may get it on the record, Mr. Ellis, does your company that you are testifying for now, pump any oil or deliver any oil from any other place than Littleton?

A. No.

By Mr. Crawford:

Q. And all of that is pumped directly out of the state through this three inch line into Pennsylvania?

Mr. Avis: We object to the word "directly" in that question.

A. Yes.

Q. Leave out the word "directly." All of this oil is pumped out of the State of West Virginia through this three inch line you have spoken of, into Pennsylvania?

A. Yes sir.

By Mr. Avis:

Q. And that is the only line that you have, a three inch
510 line there from Littleton? Have you no other line?

A. That is all.

Mr. Crawford: About the request of counsel, it is not quite clear to me. Do you want figures for the total amount that they pumped out from Littleton, inclusive of the amount received from The Eureka Pipe Line Company or exclusive of that amount?

Mr. Avis: Whichever is the most convenient way. If he will give what his records will show we will accept your figures of 131,-

811.67 barrels as being the correct amount delivered by The Eureka Pipe Line Company.

The Witness: I can only give it combined.

By Mr. Avis:

Q. Well, I would rather have it combined. If you can give us the total figures then we will have the correct figures by deducting the amount that was delivered to you by The Eureka, will we not?

A. Possibly so.

Q. Well, would we not, Mr. Ellis? Possibly on the record, if you have got the total figures that went out——

A. It depends. If there was some held over for a few days more than a year then it would not be exactly correct.

Q. I understand; but as near to it as you can give us.

A. But it would be approximate, though, close to it.

511 Q. You mean, if there was some held over in the tanks, there, it would not go out in the full period of a year?

A. We do not always pump the tank dry.

Q. You very rarely pump it dry; as I understand it, you always leave some oil in there, do you not?

A. Sometimes we only pump half out. It depends on what we do.

Q. Pump a part and leave it until it suits your convenience to pump the balance?

A. Some other time, that is all.

Mr. Crawford: I do not ask counsel to accept any figures we have proved as correct. We have abundantly proven the correctness of the figures of deliveries of The Eureka Pipe Line Company to the West Virginia Pipe Line Company by other witnesses. We do not ask any favors in that behalf. That amount I consider to be proven. But, I object to the putting in evidence of any table furnished by the witness as part of the cross examination. I have no objection to Mr. Ellis giving you any information he has.

Mr. Avis: If you do object, put it in the record.

Mr. Crawford: I object to it.

Mr. Avis: To any figures furnished by him in the statement?

Mr. Crawford: To their going in as part of your cross examination.

512 Mr. Avis: Yes, or any statement he furnishes in this connection, at my request.

Mr. Crawford: Going in as part of your cross examination.

Mr. Avis: In connection with my request?

Mr. Crawford: Yes. I request that if the witness furnishes counsel for the State with any information, I be furnished with a copy of the information.

Mr. Avis: Well, I request that any information furnished to me by the witness be furnished through counsel for the plaintiff.

The Witness: I do not think there is any objection to that.

Mr. Avis: We want it furnished to the stenographer, but I would like it to come through Mr. Crawford.

Mr. Crawford: I would rather not have it that way, because this witness is not under my control. He is an unbiased and unprejudiced witness. He has nothing to do with The Eureka Pipe Line Company. You made your request that he furnish you certain information; that is between you and him. Now, what you do with that information, I suppose——

Mr. Mathews: No, that was not the request. The request was that he furnish it to the notary as part of the evidence here.

513 He was kind enough to say he would do it. We do not want it sent to us individually; we want it in the record.

Mr. Crawford: I object to that, and hold that neither witness nor counsel has any right to get information into the record in that way.

Mr. Avis: We think we are entitled to it, Mr. Crawford.

Mr. Powell: How do they have anything to do with The Eureka Pipe Line Company?

Mr. Avis: You have shown just what came from The Eureka Pipe Line Company and what was done with it. We want to see what the aggregate was. We want to see whether the tail is wagging the dog or not, and it is surely part of the cross examination.

Mr. Powell: It is not any part of The Eureka's case.

Mr. Avis: I think you gentlemen are claiming credit for that, or you would not have put that witness on the stand here. You are taking the position that 131,000 barrels is interstate oil. Let us see whether it is. That is a point that is in dispute here, whether it is interstate oil.

Mr. Powell: What could their private business have to do with The Eureka?

514 Mr. Crawford: That is not the point of my objection. At the proper point, I shall object, Mr. Powell, that it is immaterial and irrelevant, and not pertinent to the issues; but my present position is that that is not the proper way for the State to get in its evidence, to ask that it be furnished by the witness as part of his cross examination. That is practically what you have asked for. I say that is an improper thing to do, and I object to it being done in that way. It is incompetent, as I understand.

Mr. Avis: I want to get one more thing in the record.

The Witness: I do not think it has anything to do with your case.

Mr. Crawford: Mr. Ellis, wait until you are interrogated.

Mr. Avis: Take it down, we want what occurred here.

We want to say that according to our theory of the case it is very material for us to ascertain the quantities of these oils handled, mixed in the way that the witness has testified, so that the Court can ascertain as a matter of fact whether this oil ever went into interstate commerce. We may misunderstand the position of counsel in putting the witness on the stand, but we assume that the only ground on earth that they could prove that that 131,811.67

515 barrels referred to in his testimony, referred to by this witness was to make a claim that that oil was oil that went into interstate commerce. If that is not the theory of counsel who produced and offered the witness, we move to strike out the entire testimony of

the witness as being improper and immaterial, and having nothing to do with this case. That is all we want to say.

Mr. Crawford: No more questions.

Deposition closed. Signature waived by consent.

Mr. Avis: When we were here week before last certain requests were made of the plaintiff for certain information that appears in the record, and defendants' counsel is under the impression from what was said by counsel on the other side that that information would be furnished; and while we do not desire to stop the examination of any witnesses or anything of that kind, if that information is made up in the form that it was asked for, we would like to have it at this time so that we can examine it and be prepared to cross examine the witnesses at the proper time.

Mr. Crawford: I do not understand that there were any statements made or promises made by counsel for the plaintiff to furnish any evidence whatever, except through the mouths of the witnesses on the stand, and then only such evidence as is competent.

516 Mr. Avis: Do I understand from your statement that our request is declined?

Mr. Crawford: You can understand from my statement that we are here to prove our case according to law as nearly as we can, and we shall expect the State to prove its case according to law.

Mr. Avis: Do you decline to give me the information I requested?

Mr. Crawford: I decline to answer that. You have no right to ask that question. I will now call Mr. Breiner as a witness. Mr. Breiner is a witness from the Pure Oil Pipe Line Company.

517 J. W. BREINER, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Crawford:

Q. Mr. Breiner, where do you live?

A. Pittsburgh, Pennsylvania.

Q. And are you connected with the Pure Oil Pipe Line Company?

A. Yes sir.

Q. In what capacity?

A. Superintendent.

Q. Where do the lines of the Pure Oil Pipe Line Company run, from where to where?

A. Marcus Hook, Pennsylvania, to—well, I may say New Lexington, Ohio, and from a point in West Virginia to Titusville, Pennsylvania.

Q. Is the point in West Virginia in the neighborhood of Morgantown?

A. There is the point, yes.

Q. Is that where the West Virginia branch, if I may call it so, starts in West Virginia?

A. It starts there and goes to Marcus Hook, yes sir.

Q. At any rate you have a line or a pipe running from a point northwest of Morgantown and following a generally northeasterly direction into the State of Pennsylvania, have you not?

518 A. Yes sir.

Q. How many pipes does that line consist of?

A. One six inch.

Mr. Avis: We object to any testimony of the witness about the lines of the Pure Oil Pipe Line Company on the ground it has nothing to do with this case. We object to any and all questions along that line.

Q. What are your duties in connection with the Pure Oil Pipe Line Company?

A. Transportation of oil.

Q. You mean you regulate the transportation, do you?

A. I keep the property up and operate it. I am the superintendent of the line.

Q. It has been testified in this case that a certain quantity of oil, 506,799.12 barrels was gathered by The Eureka Pipe Line Company and was during the twelve months ending June 30th, 1919, delivered to your company at its station northwest of Morgantown for the Pure Oil Pipe Line Company. Without asking you for the precise number of barrels or for any number of barrels, you know that there was during those twelve months a certain quantity of oil so delivered at that point?

A. We received the oil.

Q. You received oil from The Eureka Pipe Line Company at this station near Morgantown, did you?

519 A. Yes.

Q. I am speaking now and I desire you to confine your testimony for the present to the oil which did not move on any I. C. C. tariffs. You know that there was some that moved on some I. C. C. tariffs and some that did not so move?

A. Yes.

Q. I am directing your attention to the quantity that did not move on I. C. C. tariffs, and was delivered by The Eureka to you at Morgantown. Do you understand?

A. Yes.

Q. And your answer that you know there was such a quantity refers to that?

A. Yes.

Q. What became of the oil that was so delivered to your company at the Station near Morgantown during those twelve months?

Mr. Avis: We object to that on the ground that it is incompetent, irrelevant and immaterial.

A. The oil was delivered to its destination at Pennsylvania points.

Q. What was immediately done with it after it was received?

A. Why, it was started through the Pure Oil Pipe Line Company for delivery.

Q. Out of the State of West Virginia?

520 A. Out of the State of West Virginia.

Q. And into what State?

A. The State of Pennsylvania.

Q. And that was true of all of it, was it?

A. Yes.

Mr. Avis: What do you mean by "true of all of it?"

Q. That was true of all that you received during these twelve months from The Eureka Pipe Line Company not moving on I. C. C. tariffs?

A. All the oil we received was moved out of the State.

Q. Whether you got it on I. C. C. tariffs or not?

A. Yes sir.

Q. How would you first know that any delivery was to be made at the station near Morgantown by The Eureka? What was the course of business?

A. The consignee would notify us that they had purchased so much oil to be delivered to us, to receive for them and deliver to them at the destination.

Q. They would notify you that the oil was to be delivered to you by whom?

A. How is that?

Q. That would notify you that the oil was to be delivered to you by whom?

A. By The Eureka Pipe Line Company.

521 Q. And they would notify you that you were to do what with it?

A. To deliver it to them.

Q. Who were "them?"

A. The Pure Oil Refining Division.

Q. What is the Pure Oil Refining Division? What do you mean by that?

A. That is a name they take as manufacturers of oil, the refining division of the Ohio City's Gas Company.

Q. Where is their refinery or where are their refineries?

A. The Pure Oil Refinery is at Marcus Hook, Pennsylvania.

Q. Is that on the Delaware River?

A. I believe so, yes sir.

Q. You know it is in the eastern part of Pennsylvania anyway?

A. Yes sir.

Q. And the instructions that you received in regard to this oil were that it was to be delivered to you by The Eureka Pipe Line Company and was then to be forwarded by you to Marcus Hook, Pennsylvania?

A. Yes sir.

Q. That was the regular course of business, was it?

A. That was the regular course.

Q. And did that apply to all of the oil that you received
522 from The Eureka Pipe Line Company during those twelve months not moving on I. C. C. tariffs?
A. Yes sir.

Mr. Crawford: You may cross examine.
Mr. Avis: I think, Mr. Crawford, when you look at the record you will find out you did promise that information I just asked for a little while ago.

Cross-examination.

By Mr. Avis:

Q. The line that you referred to that goes from a point in West Virginia to Marcus Hook, Pennsylvania, is a line not connected with any other line in West Virginia except The Eureka Pipe Line Company, is it?
A. Sir?
Q. (Question repeated by the stenographer.)
A. No sir, it is a Pure Oil pipe line.
Q. This place in West Virginia you referred to is one of the terminii of that line?
A. Yes sir.
Q. And that one that is near Morgantown, West Virginia, is it not?
A. Yes sir.
Q. And the other terminii of that line is Marcus Hook, Pennsylvania?
A. Yes sir.
523 Q. The oil that you have been referring to as being delivered to you by The Eureka Pipe Line Company is gathered by that company, is it not?
A. I believe so.
Q. And they complete their delivery of that oil to you in your tank near Morgantown, do they not?
A. They deliver the oil to us in our tank.
Q. They get the gathering charge and transportation charge until it gets to that point, do they not?

Mr. Crawford: If he knows.

A. I don't know.
Q. You don't know?
A. No.
Q. You do not get any part of the gathering charge for gathering that particular oil in West Virginia, do you, does your company?
A. No sir.
Q. Then you do not start it on its final journey until after it is delivered to you?
A. It gets into our tanks and we start it on.

Q. Then you start it on?

A. Yes.

Q. It does not move from your tanks to Marcus Hook, Pennsylvania, on any tariff, does it?

524 A. On our tariff.

Q. Have you a local tariff.

A. The Pure Oil Pipe Line Company has a tariff, yes.

Q. Does it move on your tariff? By that I mean the tariff of your Pipe Line Company, or does it move on a joint tariff, if you know?

A. Well, what oil do you mean?

Q. I am talking about the same oil you are talking about, this five hundred and some thousand barrels.

A. That moves on our tariff from the point we get it, where it is delivered to us on our tariff.

Q. That is it moves from that point on your tariff? It moves on your tariff from the point of delivery to you by The Eureka Pipe Line Company near Morgantown, West Virginia to Marcus Hook, Pennsylvania?

A. Yes sir.

Q. And does not move on a joint tariff of yours and The Eureka Pipe Line Company?

A. No sir.

Q. Who controls the shipment of that oil after it is delivered to you near Morgantown, West Virginia? Who directs the course of that oil?

A. Why, the Pure Oil Company asks—if I understand the question right, the Pure Oil Company asks the Pure Oil Pipe Line

525 Company to deliver it to them at Marcus Hook.

Q. That is the only place of delivery, is it?

A. For the Pure Oil Company.

Q. Is there more than one refinery at Marcus Hook controlled by the Pure Oil Company?

A. Not that I know of.

Q. How do you regulate the delivery of that oil? Do you deliver it all at once or do you deliver it as they need it and call for it?

A. We deliver it according to the capacity of their line.

Q. Is that according to their demands? To illustrate what I am trying to drive at, suppose you had more oil in your tank lines than the refinery would need at a particular time, would they write you to hold that until they needed it or what?

Mr. Crawford: I object to the question as irrelevant and incompetent, unless confined to the twelve months under consideration.

Mr. Avis: All of my questions are referring to the twelve months under consideration.

A. We have never had any instructions to hold.

Q. Your company is the Pure Oil Pipe Line Company, is it?

A. Yes sir.

Q. What is the connection between the Pure Oil Company and the Pure Oil Pipe Line Company?

526 A. I don't know as I know just exactly the connection.
Q. Are not the officers nearly the same or the same?
A. Sir?
Q. Are not the officers the same?
A. Not all of them, no sir.
Q. Which of them are the same?
A. I don't know as I can answer that question.
Q. Is the president of one corporation also the president of the other corporation?
A. I believe he is, but I would not——
Q. From whom—what is your position, superintendent?
A. Superintendent, yes.
Q. From whom do you take your instructions? Who are your superior officers?
A. The Vice-President.
Q. Who is he?
A. Mr. W. J. Higgins.
Q. And he is the Vice-President of the Pure Oil Pipe Line Company?
A. Yes sir.
Q. What is his connection with the Pure Oil Company?
A. I don't know.
Q. Have you offices at Marcus Hook, Pennsylvania?
A. No sir.
527 Q. I don't mean you personally, I mean your company, the Pure Oil Pipe Line Company?
A. No, we have no offices there.
Q. Where are your offices?
A. At Pittsburgh, Pennsylvania.
Q. Do you not know as a matter of fact that the stock ownership of the Pure Oil Company and the Pure Oil Pipe Line Company is in the same people?

Mr. Crawford: I object to the question as immaterial, irrelevant and incompetent.

Q. The majority of it?

Mr. Crawford: And I also object on the further ground it is not in any way connected with the issues of this case.

A. No sir, I do not.
Q. You don't know whether that is true or not?
A. No sir.
Q. It may be true?
A. I don't know.
Q. You don't know?

Mr. Crawford: I object. The witness says that he does not know. I object to it as incompetent.

Q. Please answer the question.
A. I don't know.

Q. Is there any officer of your company here today?
528 A. No, sir, not to my knowledge.
Q. Who had you come here? Which one of your superior officers directed you to come here?
A. Well, I was asked to come here, yes.
Q. By whom?
A. By the Vice President.
Q. And he is also Vice President of the Pure Oil Company?
A. No, sir.
Q. He is not?
A. No, sir.
Q. The President of the Pure Oil Company and the President of the Pure Oil Pipe Line Company is the same man?
A. I believe so.
Q. What other officers of your company are there besides the President and Vice President?

Mr. Crawford: I wish to object to all of this line as immaterial and irrelevant and entirely foreign to the issues of this case, and I suppose that it may be understood that that objection goes to this entire line to avoid repetition?

Mr. Avis: That is entirely agreeable.

A. Secretary and Treasurer, I believe.
Q. Is the Secretary and Treasurer of your company also Secretary and Treasurer of the Pure Oil Company?
A. No, sir, not to my knowledge.
Q. Do you know? Have you any information on the sub-
529 ject, or is that just your opinion?
A. I have no information at all on that subject.
Q. It may be so?

Mr. Crawford: I object. The witness says that he does not know.

Q. Who are the members of the Board of Directors of the Pure Oil Pipe Line Company?
A. I cannot answer the question.
Q. Who are the members of the Board of Directors of the Pure Oil Company?
A. I cannot answer that.
Q. You said a while ago in your evidence in chief that the Pure Oil Company was the refinery division of the Ohio Cities Gas Company, did you not?
A. Yes, sir.
Q. How do you know that?
A. I saw that marked up on their building at the refinery, the refining division of the Ohio Cities Gas Company.
Q. You go to Marcus Hook frequently, do you not?
A. I go over our line, yes.
Q. When you go to Marcus Hook where do you make your headquarters, at the Pure Oil Company?
A. No, sir.
Q. When you transact any business to be transacted officially at

that end of the line at what office do you stay when you are
530 there, write your letters, etc.

A. I don't have any letters to write when I am there.

Q. Have you seen anything marked up in any of your offices or in the offices of the Pure Oil Company that would give you the connection between the Pure Oil Pipe Line Company and the Ohio Cities Gas Company?

Mr. Crawford: I object to that as incompetent.

Q. If there is any such?

Mr. Crawford: I object to that as incompetent.

A. No, sir, I have not.

Q. Then all you know about the connection of any of these companies that you have seen it marked up that the Pure Oil Company is the refining division of the Ohio Cities Gas Company, is that correct?

A. That is answered.

Q. But don't you know that there is also a connection or affiliation between the Ohio Cities Gas Company and the Pure Oil Pipe Line Company?

A. I have reason to believe that, but I could not say positively that there is.

Q. What are your reasons to believe that?

Mr. Crawford: I object to that as incompetent. The witness cannot possibly have knowledge on that, and the reasons are immaterial and irrelevant.

Mr. Mathews: Why can he not testify to that?

531 Q. Please answer the question. He seems to have some knowledge of it.

A. Well, I am advised or have understood that the President of the Ohio Cities Gas Company is also President of the Pure Oil Pipe Line Company.

Mr. Crawford: I move to strike the answer out as hearsay on its face.

Q. And he is also the President of the Pure Oil Company?

A. I cannot say that. I do not know.

Q. I thought awhile ago I understood you to say that the President of the Pure Oil Pipe Line Company and the President of the Pure Oil Company is the same individual, but the Vice President was separate?

A. No, sir, I don't think I made that statement. I may be mistaken. You are asking of me questions here that I am frank in telling you that I don't know. I could say I heard so.

Q. But your superior in the Pure Oil Pipe Line Company, namely, the President, is also the President of the Ohio Cities Gas Company?

Mr. Crawford: I object to that as incompetent, because the witness says that he has been told by others and it is hearsay?

A. That is the information, the way I got the information.

Q. You have been told that by other officers of the com-
532 panies in question have you not?

Mr. Crawford: I object to that as incompetent and hearsay, and not the proper way to prove the existence of corporate officers, and not the best evidence.

A. That is the way I got the information.

Q. And you have understood from these other officers that there was a connection and affiliation between the Pure Oil Pipe Line Company and the Pure Oil Company, and the Ohio Cities Gas Company, that is correct, is it not?

Mr. Crawford: I make the same objection.

A. Yes, that is the way I got my information.

Mr. Crawford: I move to strike out the witness' answer and all testimony in regard to officers of the three companies whom the counsel is interrogating the witness about, and also in regard to their so-called affiliations on the ground that it is on its face hearsay and not the best evidence.

Q. And you have understood from these same officers that the three companies are controlled by the same interests, is that not true?

Mr. Crawford: I make the same objection.

A. Well, no.

Q. What?

A. I do not get that question just right.

(The question was repeated by the stenographer.)

Mr. Crawford: I object to that question as irrelevant and
533 immaterial and not pertinent to the issues in this case, and as incompetent, because it calls for hearsay and is not the best evidence and not the proper way to prove corporate control if such there be.

Q. Please answer the question.

A. The same officers, you mean, or the same offices?

Q. I am referring to the same officers or people from whom you got your information about this control. You said that you got your information from those officers that the Ohio Cities Gas Company and the Pure Oil Pipe Line Company were affiliated companies.

Mr. Crawford: I object to that on the same ground.

A. The same officer gave me the information as I suggested before.

Q. Who was that officer?

Mr. Crawford: What was that information?

A. The Vice President of the Pure Oil Pipe Line Company.

Q. The question that I want to ask is this: Those questions that I have just asked you refer to the Ohio Cities Gas Company and the Pure Oil Pipe Line Company. Now, I have included in that the Pure Oil Company. Haven't you also understood that the Pure Oil Company was affiliated with the Pure Oil Pipe Line Company and with the Ohio Cities Gas Company, from the same officer?

Mr. Crawford: I make the same objection as before.

534 A. Yes, yes, sir.

Mr. Crawford: I move to strike out the answer of the witness on the ground that it is not the best evidence, and is on its face hearsay, and not the proper way in which *the* prove any information about corporate relations, and as calling for a conclusion of law.

Q. The officer that you refer to is the Vice President of your company, the Pure Oil Pipe Line Company?
A. Yes, sir.
Q. Do you know what, if any, office he holds in the Ohio Cities Gas Company, or the Pure Oil Company?

Mr. Crawford: I make the same objection.

A. I don't know of any office he holds except Vice President of the Pure Oil Pipe Line Company.
Q. Do you know whether he is a member of the Board of Directors of the other two companies?
A. I do not.
Q. He may be without your knowledge?
A. Yes.

Mr. Crawford: I object to that. The witness says that he does not know.

Q. Does the Pure Oil Company get any other oil at Morgantown except the oil that it gets from the Eureka Pipe Line Company?
A. The oil it gathers within the State.
535 Q. Then it gathers oil within the State, does it not?
A. Yes, sir.
Q. And that oil is mixed in the same tanks at Morgantown with the oil that is delivered to you by the Eureka Pipe Line Company, is it not?
A. No, sir, it is not mixed.
Q. Is it kept in separate tanks?
A. No, sir.
Q. It goes into the same tanks, does it not?
A. We receive it in the same tanks, but not at the same time.
Q. Well, suppose you had a tank half full of oil delivered to you by the Eureka Line Company and then you gather some of your own, wouldn't you mix that together?
A. No, sir, not necessarily.
Q. Don't you do it as a matter of fact and practice?
A. No, sir.

Q. Tell me how you handle that oil?

A. We pump out the tender and then follow it with the oil we gather.

Q. Why do you do that? Why do you keep that separate from the oil that you gather?

A. We don't aim to keep it separate. It mixes in the line, but we keep moving it that way.

Q. It then mixes in the line within the State of West
536 Virginia, doesn't it?

A. I cannot say it does.

Q. Don't you know as superintendent of this company that it is handled through the same line?

A. Yes, we handle it in the same lines.

Q. And you throw it into the same lines with the other, don't you? Or put it in the same line with the other?

A. Put one behind the other. It goes in the line, when one is completed the other starts right in after.

Q. The oil that you gather in West Virginia is of what grade?

A. Pennsylvania grade oil.

Q. Pennsylvania grade?

A. Yes.

Q. And the oil that was delivered to you by the Eureka Pipe Line Company during the year ending June 30, 1919, that you have been referring to was also Pennsylvania grade oil?

A. Delivered as Pennsylvania grade, yes, sir.

Q. Do you mean to say that you keep in your tanks at or near Morgantown the oil gathered by you separate from the oil gathered by them after it reaches Morgantown?

A. No, I don't say we keep it separate. We empty the tank and fill it up with the oil we gather.

Q. Don't you sometimes run it in one above the other, in the same tank?

A. Well, there may be two or three inches of oil in the
537 bottom of the tank, not half full, as you tried to make it appear a moment ago.

Q. Would there be any purpose in keeping the oil separate in those tanks if it was all the same grade oil?

A. Not necessarily, no.

Q. Do you mean to say that the Eureka Pipe Line Company pumps into different tanks?

A. No, we use the same tanks.

Q. You use the same tanks?

A. Yes.

Q. And you gather into the same tanks?

A. Yes, sir.

Q. That is true, isn't it?

A. We don't gather when we receive oil for tender.

Q. Suppose the Eureka Pipe Line Company should deliver to you to-day five thousand barrels of oil and you had a tank that would hold considerably more than five thousand barrels of oil, and you should gather five thousand barrels of oil, wouldn't you probably fill that tank?

A. Not at that point.
Q. Why?
A. We would be shipping that five thousand barrels on to its destination.
Q. Don't you sometimes hold it there several days?
A. We only hold it there long enough so that we can get
538 rid of it. We don't hold it several days at no time.
Q. How much oil do you try to collect there before you start it on its journey from Morgantown? Do your tariffs provide for any particular quantity?
A. No, sir.
Q. You don't carry any oil whatever for anybody except the Pure Oil Pipe Line Company at that point, do you,—the Pure Oil Company?
A. No, sir.
Q. That is the only person to whom you deliver oil or to whom oil is consigned to Morgantown, is it not?
A. Yes.
Q. Didn't as a matter of fact last year you received some oil at Morgantown that was delivered to you by the Eureka Pipe Line Company that moved on I. C. C. tariffs?
A. Yes, sir.
Q. That oil was not gathered by the Eureka Pipe Line Company, was it?
A. No, I believe not.
Q. When that oil reached Morgantown wasn't it put in the same tanks with the oil that was gathered by the Eureka Pipe Line Company?
A. It was put in the same tanks that have been used for the purpose of receiving oil that was gathered by the Eureka Pipe Line Company.
539 Q. But there was no attempt to keep that oil separate, was there, from the oil that had been gathered by the Eureka Pipe Line Company?
A. Nothing special, no.
Q. There was no way for you to know, was there, the physical oil that was handled by you on the I. C. C. tariffs and transported to Marcus Hook, Pennsylvania which was delivered to you or your company in your tanks at Morgantown by the Eureka Pipe Line Company, from the oil that was gathered by the Eureka Pipe Line Company which did not move on I. C. C. tariffs.
A. I would have to answer that question by saying we did not mix it.
Q. All right, during the year ending June 30, 1919, the evidence in this case tends to show that some oil was delivered to you at Morgantown, West Virginia that moved on I. C. C. tariffs. That is correct, isn't it?
A. 1918 to 1919?
Q. For the year ending June 30, 1919?
A. Yes.
Q. That is true?
A. Yes.

Q. You have also testified that some oil was delivered to you, namely, over half a million barrels during the same period at Morgantown, West Virginia, into your tanks by the Eureka Pipe
540 Line Company that prior to its delivery to you was not moving on an I. C. C. tariff, or as far as that is concerned any tariff, but moved from Morgantown, West Virginia, from your tanks there, on your own company's tariff. That is true, isn't it?

A. Yes, sir.

Q. Now, is there any way on earth that you could tell the physical oil that moved on an I. C. C. tariff from the other oil delivered to you by the Eureka Pipe Line Company at Morgantown?

A. You mean tell the quality of the oil?

Q. No, to point out and identify the particular oil that moved on the I. C. C. tariffs from that that was gathered by the Eureka Oil Company and did not move on an I. C. C. tariff?

Mr. Crawford: You mean, of course, gathered by the Eureka Company and delivered to the Pure Oil Pipe Line Company?

Mr. Avis: Yes, at Morgantown.

A. No, I would not have any means of telling.

Q. It was put in the same tanks at Morgantown, was it not, before you started it on its journey on your tariff?

A. The oil was received in the same tanks, yes.

Q. And you did not receive any information from the Eureka Pipe Line Company when they delivered oil in your tanks, that any particular oil that they delivered to you was on an I. C. C. tariff. is that correct?

A. Yes, sir.

541 Q. What would be the information that you would receive in that respect? Would they deliver to you certain oil and say, "This oil is moving on an I. C. C. tariff and came from a particular place?"

A. No, they would tell us that they were ready to make delivery of the tender under that I. C. C.

Q. It was just some oil that they were delivering which was not any particular oil that came from any particular place that you could point out from any other oil of the same grade, was it?

A. It was oil that was gathered to be delivered or offered for delivery, which was delivered as soon as possible with the exception of the general mixture that takes place.

Q. But the oil that was gathered by the Eureka Pipe Line Company and delivered to you during that year was placed in the same tanks with the oil that was delivered to you by the Eureka Pipe Line Company that moved on an I. C. C. tariff, was it not?

Mr. Crawford: You mean at the same time?

Mr. Avis: Sir?

Mr. Crawford: You mean at the same time and in the same tanks?

Mr. Avis: Yes.

A. No, sir.

Q. Tell me how, when a delivery of oil was being made
542 to you by the Eureka Pipe Line Company, which oil you transported from Morgantown,—how you could tell where that oil came from?

A. What oil are you referring to now? The one delivered without a tender, or the I. C. C.?

Q. I don't care whether with or without a tender?

A. I wouldn't know if it was delivered without a tender.

Q. And even if it were delivered with a tender, you don't mean to say that that identical oil came from the very place it was consigned from, do you?

A. I believe so, as near as possible to do so.

Mr. Crawford: I move to strike that answer out on the ground that that is without the witness' knowledge.

Q. You are superintendent of a pipe line company, aren't you, Mr. Breiner?

A. I am not superintendent of the Eureka.

Q. But you are superintendent of the Pure Oil Pipe Line Company?

A. Yes, sir.

Q. And you are qualified in the business of transporting oil, aren't you?

A. I am holding that position.

Q. How long have you been in that position?

A. Seven years.

Q. You know how oil is transported in pipe lines, do you not?

A. We pump it, yes.

543 Q. And you know it goes through pipe lines, do you not?

A. Yes, sir.

Q. And you know it goes in tanks, do you not?

A. Yes, sir.

Q. When you start oil from Morgantown to Marcus Hook, Pennsylvania, do you know where any of that oil comes from, or is there any way that anybody can tell where any particular oil or oils come from of the same grade?

Mr. Crawford: I object to the last part of the question as incompetent.

A. If he is gathering the oil he has some idea where it comes from.

Q. But it is mixed, is it not, in the lines as they transport it with the same grade?

A. If it is gathered, it is mixed.

Q. And it is mixed in the verious tanks before it gets to Morgantown where you have such tanks, is it not?

Mr. Crawford: Are you speaking of the tanks of the Pure Oil Pipe Line Company?

Mr. Avis: Yes.

A. I don't know what you mean, that is mixed.

Q. I don't know that I can define it as well as you can, because I am not an expert in the oil game, but I mean to say oil of the same grade irrespective of where it comes from is placed in the
544 same tanks and pipe lines in the course of transportation.

Mr. Crawford: I object. No knowledge is shown in the witness as to what takes place in the Eureka line.

A. I cannot answer that question because I don't understand it.

Recess.

Afternoon Session.

Q. I will ask the last two questions be read.

(The stenographer read the questions and answers as requested.)

Q. Since you have heard the last questions and answers read, are you able to answer the question any more definitely than the answer you have just given to the last question?

A. No, sir.

Q. How are the pipe lines or the pipe line system of the Eureka Pipe Line Company connected with your tanks at or near Morgantown?

A. We have a connection running—an overhead connection into our tanks.

Q. That connection is controlled by a valve?

A. Yes, sir.

Q. When they turn oil into your tanks for delivery there is there any way by which you can tell where that physical oil came
545 from?

A. No, sir.

Q. Then you cannot tell whether that particular oil came from what is known as the Cabin Creek field in West Virginia, or from some other portion of West Virginia, can you?

A. No, I cannot positively tell.

Q. All you know about that oil is that a certain quantity of a given grade of oil has been delivered to you, is that not true?

A. I don't understand the question.

Q. The question is, all you know about that oil is that a certain quantity of a given grade of oil has been delivered to you? Is that not true?

A. Well, that all the oil on a certain tender has been delivered to us.

Q. Suppose the Eureka Pipe Line Company tenders you, we will say, 75,000 barrels of oil for delivery in your tanks at Morgantown, and we will say of the Pennsylvania grade of oil, is there any way on earth by which you can tell where the Eureka Pipe Line Company actually brought that oil from?

A. No, I could not tell you.

Q. And there is no way that you know of that it could be told from the way the oil is handled, is there?

A. Why, if oil was carried in lines they ought to be able to tell.

546 Q. But you don't mean to say that it is carried in lines, we will say, a Pennsylvania grade oil, the kind that you handled?

A. We offer everything as Pennsylvania grade oil.

Q. You do not handle any other grade of oil?

A. No.

Q. From your Morgantown station?

A. No.

Q. Therefore, you don't know whether that has come from the Cabin Creek field in West Virginia, or from Roane County, West Virginia, or Lincoln County, West Virginia, or Wetzel County, West Virginia, do you, as far as the physical oil is concerned?

A. No.

Q. And you don't know whether that particular oil was the oil that is described in the tender to you, that the tender calls it? In other words, if 75,000 barrels of oil is started to you from Cabin Creek district on an I. C. C. tariff, we will say I. C. C. tariff No. 158 consigned to Marcus Hook, Pennsylvania, you don't know whether that oil has come from the Cabin Creek field or from some other field? All you know is that they have tendered you 75,000 barrels of Pennsylvania grade oil, and you don't know where it comes from, that is the actual oil itself?

A. Still if it was Cabin Creek oil, we would have reason to believe it came from Cabin Creek from the color.

Q. Don't you know that in handling oil of the Pennsylvania grade by the Eureka Pipe Line Company, that it is not

547 kept separate according to the fields that it is offered from?

A. I don't know anything about how they handle their oil in the fields.

Q. Then of course you don't know anything about where the particular physical oil comes from that is delivered to you on the tender, do you?

A. Not when it comes through without the tariff.

Q. If it comes through on a tariff you don't know whether it has actually come from where it purports to come from, do you?

A. I would have reason to believe it came from where it was tendered.

Q. What reason have you to believe that?

A. I said a moment ago by the color.

Q. Do you examine the color of the oils which come from Cabin Creek or Lincoln County or Roane County?

A. No, I haven't examined it personally, no.

Q. Then you don't know from its color yourself, do you?

A. I have reason to believe that it is the oil that was tendered as near as possible.

Q. When oil is tendered to you at Morgantown, West Virginia and you transport it through the lines of your company to Marcus Hook, Pennsylvania, and it gets there, is the oil that travels on an I. C. C.

tariff kept separate from the same grade of oil that is gathered by the Eureka Pipe Line Company, or does not travel on such an I. C. C. tariff?

548 A. We deliver the quantity.

Q. That is all?

A. Yes.

Q. And that is all they attempt, isn't it, the quantity?

A. No, sir, not as I understand it. The oil that is delivered to us on an I. C. C. tariff is very near the oil that is taken in, as I understand it.

Q. Of that you are not sure?

A. I have reason to believe that is the fact.

Mr. Crawford: I move to strike out the witness' last two answers as obviously not based on knowledge.

Mr. Avis: I think so myself. We have no objection to that, because that is my view of it, too, Mr. Crawford.

Q. Have you a valve that you turn to place oil in your tanks at Morgantown, for the oil that travels on the I. C. C. tariff, and another valve for the oil that is gathered by the Eureka Pipe Line Company and another value for the oil that is gathered by your company?

A. We have valves on these lines.

Q. Do you have a separate valve for each oil that is handled in these three ways? As I understand you to explain, you say your company gathers some oil?

A. Yes.

Q. And it is put in the tanks at Morgantown?

A. Yes.

549 Q. Have you a separate tank for your oil that you gather?

A. No, we have no separate tank. We deliver it at different times.

Q. I understand. We are not speaking about the delivery. I am speaking about the delivery to you?

A. Yes.

Q. Does the Eureka Pipe Line Company turn on one valve for the oil it gathers and another valve for the oil that travels on an I. C. C. tariff so you can distinguish one from the other?

A. I don't know that.

Q. Then you don't know whether this oil that travels on an I. C. C. tariff has been mixed with the other oil that is gathered by the Eureka Pipe Line Company before it reaches you or not, do you?

A. Positively not, no.

Q. But you do know that when it is put in the tank at Morgantown for delivery to you, that one is not kept separate from the other, don't you?

A. I don't get that question.

Q. I am sorry I cannot make myself plainer. You said after the oil was delivered to you you mixed it or it got mixed. Where is it mixed together, after the delivery to you at Morgantown?

A. It will mix a little in transit, one batch with the other.

550 Q. Won't it mix in tanks there?

A. It would if you put it in tanks that way.

Q. You do put it in tanks that way, don't you, before you start it moving?

A. If your tank is empty you put in a certain tender of oil and you put that in the line before you receive another, and if you do that you cannot mix it.

Q. Suppose a tank is half full of Pennsylvania grade oil and some more comes in, don't you fill up that tank before you start a movement?

A. No, sir.

Q. What is the capacity of your tanks?

A. Well, there is a five thousand barrel oil tank and about a thirty-five thousand barrel oil tank.

Q. On tenders on I. C. C. tariffs, what quantity does the Eureka Pipe Line Company tender to you at a time?

A. If I recall, I think it was fifty thousand barrels.

Q. Do I understand you to say that the oil that is gathered by the Pure Oil Pipe Line Company in West Virginia, of the Pennsylvania grade, is kept entirely separate from the oil that is gathered by the Eureka Pipe Line Company of the same grade, and which is placed in tanks of the Pure Oil Pipe Line Company at or near Morgantown until after it starts from your tanks for Marcus Hook, Pennsylvania?

A. Yes, sir.

551 Q. Then as I understand you, you have separate tanks for oil that is gathered by your company from those that is gathered by the Eureka Pipe Line Company?

A. We have separate tanks but not at Morgantown.

Q. All the oil that is delivered to you by the Eureka Pipe Line Company is delivered at or near Morgantown, is it not?

A. Yes, sir.

Q. Don't you handle any oil from Morgantown?

A. Yes, sir.

Q. Don't you keep it separate at Morgantown?

A. We put it in tanks. There is nothing else, not when we put ours in. We claim the tank is empty.

Q. You wait until the tank is empty?

A. We pump one batch of oil out and pump another in and continue in that way.

Q. But none of the oil that is delivered to you by the Eureka Pipe Line Company is kept separate so as to show which oil moves on an I. C. C. tariff from that oil which is delivered to you by the same company that does not move on an I. C. C. tariff?

A. It is separate so far as we are concerned.

Q. Suppose the Eureka Pipe Line Company gives you notice of a tender of 75,000 barrels of oil to-day, and it should also deliver to you of oil gathered by it 75,000 barrels to-morrow, you would

552 first run out of your tank the 75,000 barrels that they gave you notice of tender before you would attempt to move the other, is that true?

A. Yes, sir.

Q. But as you stated before you would not know where either one

of those quantities came from so far as the physical oil is concerned, and so far as your own knowledge goes?

A. I wouldn't know where the oil came from that was given without a tender. I would have reason to believe that it came from the point where it was tendered.

Mr. Crawford: I move to strike out the last part of the witness' answer as not based on knowledge.

Q. Suppose the notice for tender was for 75,000 barrels of oil that came from the same identical place that the Eureka Pipe Line Company had gathered oil that was not forwarded on an I. C. C. tariff, how would you know one from the other if you would not have the color of oil then to judge by?

A. I don't understand that question.

Q. You have stated that you had reason to believe that you could tell that oil came from a certain place by the color of the oil; suppose that I was shipping you oil, I will say, from Cabin Creek Junction on an I. C. C. tariff, 75,000 barrels of oil, and I followed that oil by another 75,000 barrels of oil that was produced in the same field, that was not traveling on an I. C. C. tariff, how could you tell the oil that traveled on the I. C. C. tariff from that that did not
553 travel on the I. C. C. tariff, if you didn't have the color to go by?

A. If they were both of the same color, I could not tell.

Q. Would you still keep them separate if the color didn't vary, if they were both of the same color?

A. If I received them on the same tender I would not, no.

Q. The proposition that was embraced in my question is that they are not handled on the same tender, but one is gathered and simply delivered to you by the Eureka Pipe Line Company while the other is gathered by somebody else and delivered to you by the Eureka Pipe Line Company on an I. C. C. tariff. How, under those circumstances, could you tell one quantity from the other if you didn't have the color to go by?

A. The quantity or quality?

Q. The quantity or quality?

A. I understood you to say quality or quantity, and that is the reason I asked the question.

Q. Quantity or quality, if you didn't have the color to go by?

A. I would not know.

Q. Then you would not try to keep them separate, would you, the two quantities, because they were both of the same grade and quality?

A. I would have to keep the amounts separate; yes, I would have to keep the amounts separate.

Q. In other words you would have to keep some 75,000
554 barrels of that particular grade separate?

A. I would deliver the 75,000 barrels that was on a certain tender and the other 75,000 on the other, or whatever the amount was.

Q. Mr. Breiner, you turn on the same value to let that oil go into

the tanks, whether it is oil traveling on an I. C. C. tariff or oil that has simply been gathered by the Eureka Pipe Line Company?

A. I don't know what the Eureka does.

Q. What?

A. I don't know what they do.

Q. Who regulates the valve and lets the oil in in your tanks?

A. We regulate the valve from the tanks to our pump.

Q. But who regulates the valve that lets the oil into your tanks?

A. The Eureka regulates those valves.

Q. Then as a matter of fact you don't know where the oil comes from after it gets into your tanks, do you, if they regulate that?

A. I know it comes from the Eureka Pipe Line Company.

Q. That is all you know about it, isn't it?

A. Yes.

Q. In so far as the physical oil is concerned?

A. Yes, as I staid in my previous answers.

555 Q. Though they regulate the putting of it into your tanks?

A. Yes.

Q. And you know nothing about that oil except what they tell you, where it comes from or what field it is produced in?

A. Oil that comes without a tender, I don't know where it comes from.

Q. But you do not see the oil until after it is put into your tanks, and you don't attempt to handle it until after it is put into your tanks; it is delivered to you by the Eureka Pipe Line Company, whether oil that they gathered or forwarded on an I. C. C. tariff?

A. We don't have anything to do with that until it comes to our tanks.

Q. How far is that valve from your tanks in location?

A. Well, the valves are right at the tanks, practically at the tanks.

Q. That is the Eureka Pipe Line Company valves are practically at the tanks where they deliver oil into them?

A. Well, now, to make it more explicit, I suppose fifty or seventy-five feet from the tanks. You would call that at the tanks, wouldn't you?

Q. Yes, that would be fairly within reason. Have you a separate valve to let the oil in the tanks that you gather?

A. We have valves on our lines, yes, sir.

Q. Valves on your own lines?

556 A. Yes.

Q. But you used the same tanks at different times?

A. Yes, sir.

Q. And the Eureka has not one valve to deliver I. C. C. oil and another valve to regulate the delivery of oil that they gather, has it? It has just one valve to each tank?

A. Yes.

Q. How many lines or pipes of the Eureke Pipe Line Company connect with your tanks at Morgantown?

A. One line.

Q. Do you know what size of line that is about?

A. No, I don't know the exact size of the line.

Q. As a matter of fact you don't know anything about this oil or have anything to do with it until after it is delivered to you in the tanks at Morgantown? I am referring to the oil that is handled by the Eureka Pipe Line Company?

A. I have nothing to do with the Eureka Pipe Line Company.

Q. And you know nothing about it until after it is delivered to you?

A. No.

Q. When the Eureka Pipe Line Company delivered to you this five hundred thousand—in round numbers—barrels of oil that they delivered to you during the year ending June 30, 1919, and you put it in the tanks, when did that oil first come in contact with the oil that you gathered, that is your company?

557 A. When it went in the lines.

Q. From the tanks?

A. Yes.

Q. And that was in the State of West Virginia?

A. Yes, sir, that was in the State of West Virginia.

Q. When the oil that they delivered to you on I. C. C. tariffs at Morgantown was run into your lines, it also became mixed with the oil that you had gathered within the State of West Virginia, did it not, when you ran it into the lines?

A. A certain amount was mixed, if there was oil there in the lines at the time the other oil went in.

Q. And when you made deliveries of this oil you delivered so many barrels of the mixture, whatever the tender called for, is that not true? In other words, if the tender were of 75,000 barrels, it would not make any difference whether the oil became mixed with the oil gathered by you or not, you just delivered 75,000 barrels of that oil whether it were mixed or not?

A. If there was a delivery of 75,000 barrels on a certain tender——

Q. But it would not make any difference whether it was mixed or not? You would not keep the mixed oil separate from the other oil, would you?

A. There would be some mixture in the line and that would be delivered, too.

Q. As a part of the 75,000 barrels on that tender?

558 A. Yes.

Q. What is the length of your line from Morgantown to the Pennsylvania line within the State of West Virginia?

A. I could not give you just exactly the data on that.

Q. About how much, about how long?

A. Twenty-six or twenty-seven miles I believe.

Q. And how far is it from the West Virginia State line to Marcus Hook, Pennsylvania over your lines?

A. About 223 miles approximately.

Q. What is the rate on handling oil or transporting oil over your lines from Morgantown to Marcus Hook, Pennsylvania per barrel?

A. I am sorry to say I cannot tell you that. I ought to, too, but I don't remember it. I don't know whether 30 cents or 33 cents.

Q. Is it either?

A. Sir?

Q. Is it either, from Morgantown to Marcus Hook, Pennsylvania?
A. Yes.
Q. You think it is one or the other?
A. I think it is thirty cents.
Q. Are you sure of that, or are you just guessing at it?
A. No, I am not guessing. I want to be certain about it, and I want to be frank with you, too. I am going to say that I
559 cannot remember that. I am not posted.

Q. What is the rate from Cabin Creek to Marcus Hook, Pennsylvania over the I. C. C. tariffs in which both your company and the Eureka Pipe Line Company participate?
A. I cannot tell you now what the rate is.
Q. I hand you joint I. C. C. tariff No. 158, filed with the Interstate Commerce Commission by the Eureka Pipe Line Company in connection with your company in which the rate shown thereon from Cabin Creek station to Marcus Hook, Pennsylvania, is 33 cents per barrel, and ask you how much of the distance from Cabin Creek Junction that oil is transported by the Eureka Pipe Line Company and how much by your company, if you know?

Mr. Crawford: Won't you identify that with this exhibit, which is Plaintiff's Exhibit 19 for Identification?
Mr. Avis: I don't think I wish to do that. I don't see any connection between that and my question.
Mr. Crawford: That is the same tariff.
Mr. Avis: I was going to hand him the tariff.
Mr. Crawford: That is the same tariff. Connect it up by giving it the identification mark so that there shall not appear to be two exhibits.
Mr. Avis: All right. I was showing him tariff No. 158, which I see is the same as Plaintiff's Exhibit 19 for Identification.

A. I don't know the distance of the Eureka Pipe Line.
560 Q. Have you any idea of the respective distances?
A. I have an idea of the distance of our lines, but I don't know the exact distance of the Eureka lines.
Q. Who has to do with the making of these tariffs, these joint tariffs on the part of your company?
A. I cannot answer.
Q. And you are the superintendent of the company?
A. Yes, sir.
Q. You cannot even tell the Court how these tariffs are arrived at?

Mr. Crawford: He did not say that.

Q. Can you?
A. Why——
Q. If you can, say so, and if you cannot, say so?
A. I frankly don't know.
Q. Frankly, do you know what the rate is from Morgantown to Marcus Hook, per barrel of oil under your tariffs?
A. I am not prepared to answer that question because I don't know. I should know, but I don't know how to answer it.

Q. The oil that you transport on your tariffs, as you stated on your examination in chief, where is that oil billed from, from what point to what point when it goes to Marcus Hook, Pennsylvania?

Mr. Crawford: If the witness knows.

Q. If you know?

561 A. I don't know.

Q. Do you know whether it is billed from a point in Pennsylvania to Marcus Hook, Pennsylvania, or not?

A. Sir?

Q. (The question was repeated by the stenographer.)

A. No, sir, I don't.

Redirect examination.

By Mr. Crawford:

Q. What is the name, if there be a local name, of this station near Morgantown of the Pure Oil Pipe Line Company that we have been talking about? Is there some name for it, the station or the terminal, or is it out in an open field and without any local name?

A. The Holland Tank Farm.

Q. About how far is that from Morgantown?

A. It is right near Morgantown, it is right at Morgantown.

Q. Then I will refer to it under that description as your Morgantown terminal, and you will understand what I mean?

A. Yes.

Q. I ask you now what tankage your company has at that Morgantown terminal?

A. We have a 35,000 barrel oil tank and a 5,000 barrel oil tank.

Mr. Crawford: I would ask the stenographer to read the last question and answer.

(Last question and answer read by the stenographer.)

562 Q. Is that what you mean?

A. Two 5,000 barrel oil tanks and one 35,000 barrel oil tank.

Q. So that the average tankage is 45,000 barrels, is it?

A. Yes, sir.

Q. When you receive notice of a tender from the Eureka Pipe Line Company of say 50,000 barrels and the delivery begins into those tanks, what do you do with the oil as it is delivered?

A. Start it to its destination.

Q. What do you mean by that? Tell me exactly?

A. Pump it through the line.

Q. You pump it into your pipe, do you?

A. Yes, sir.

Q. You pump it into the six inch pipe you have been speaking about?

A. Yes, sir.

Q. And as the oil is received from the Eureka Pipe Line Company you keep on pumping it out, do you?

A. Yes, sir.

Q. You do not get oil of the sort that was received by the Eureka Pipe Line Company not under tariffs,—you do not get that oil at the same time that you are getting the oil on a tender, do you?

A. No, sir.

563 Q. When you once start on the oil that is being delivered on a tender, you go on getting that oil until that tender is completed, don't you?

A. Yes.

Q. In other words that 50,000 barrels comes right straight along on a tender?

A. Yes.

Q. And you on your part pump it out as fast as you can conveniently or practicably into your pipe line?

A. Yes, sir.

Q. There is, of course oil in that pipe line, in the pipe ahead of this particular oil that has been tendered?

A. Yes.

Q. Generally speaking, the pipe line companies keep their pipes full of oil?

A. Yes.

Mr. Avis: We object to the question on the ground it is leading and suggestive to the witness. The witness has not answered any questions for about five minutes except by the word "yes".

Mr. Crawford: I want to state that I consider a large part of the examination of this witness that was purported to be cross examination, as really examination of new matter and I think I have a right to lead the witness. I will try not to do so any more than I can help, but I think I am justified in doing it.

564 Q. If the oil that is being delivered on the tender comes in contact in your pipe with oil in front of it, as a matter of expert knowledge there is a certain amount of mixture that takes place at that junction, isn't there?

A. Yes, sir.

Q. It cannot be helped?

A. It is unavoidable.

Q. Is that the mixture to which you referred when you spoke as a mixture taking place in your line between oil delivered on a tender and oil which you received from some other source?

A. Yes, sir, that is the mixture I referred to.

Q. That is the mixture where a column of the oil delivered on a tender ahead of the column abuts against the rear end of the column in front, is that what you mean?

A. Yes, sir, that is what I mean.

Q. When the oil that has been received from the tender has all been delivered and has gone through the pumping operation you described, if there was oil delivered following that, of oil not for-

warded on the tender, not forwarded under a tariff, or being delivered on a tender, what would you do with that oil? I refer, of course, to oil delivered by the Eureka Pipe Line Company?

A. We would start it through our pipe line.

565 Q. You would pump it into this six-inch pipe?

A. Yes, we would pump it into this six-inch pipe in the same way.

Q. Behind the 50,000 barrels which was being forwarded on the tender?

A. Behind the 50,000 barrels, or whatever it was, ahead of the other.

Q. In the case I suppose where it followed the tender, you would put it in right behind the tender?

A. Yes, sir.

Q. The two columns of oil coming together in the pipe would cause a certain amount of mixture, would they not?

A. Yes.

Q. Is that the mixture you had in mind when you spoke of these two kinds of oil being mixed at Morgantown?

A. Yes.

Q. And you would go on with the process of pumping that oil into your pipe and forwarding it until that delivery was exhausted, I suppose?

A. Yes, sir.

Q. And then you would occupy your pipe either with some other delivery from the Eureka or delivery from your own gathering lines?

A. Yes, sir.

Mr. Crawford: That is all.

566 Recross-examination.

By Mr. Avis:

Q. How many pumping stations have you on your line between your Morgantown station and Marcus Hook, Pennsylvania?

A. We have two.

Q. That is one at Morgantown and then two before you reach Marcus Hook?

A. Two,—three altogether, Morgantown and two others.

Q. When you get that oil from Morgantown into the next station you do not try to keep one separated from the other in the tanks, do you?

A. One tender is followed with the other.

Q. But you just continued to fill your tankage irrespective of whether it is traveling on a local tariff or an I. C. C. tariff, do you not?

A. We do not fill the tankage.

Q. Suppose you had 75,000 barrels of oil passing through your lines and you had one tank that held 50,000 barrels, and another

that held 25,000 barrels, wouldn't you fill up the 50,000 barrel tank before you filled up the 25,000 barrel tank, or vice versa?

A. We would continue pumping it all the time into the lines.

Q. But it goes into the tanks before it is pumped into the lines, doesn't it?

A. Some of it, yes, and in what we call the relay sta-
567 tions.

Q. Don't you always put it into your tanks and pump from tanks? You don't pump direct from the lines, do you?

A. That is a question, where you want to start from.

Q. I am talking about the oil that you handle from Morgantown to Marcus Hook, Pennsylvania. Do you pump it at Morgantown out of tanks?

A. Yes.

Q. It all goes into the tanks there?

A. Yes, sir.

Q. And at the next station doesn't it go into the tanks?

A. Not all of it, no, sir.

Q. It does not?

A. No, sir.

Q. Do you keep some separate from the other, or do you just mix it up in the tanks, or in the pipe lines at the next station?

A. We treat it at the next station the same as when we started.

Q. You treat it the same as you started?

A. Yes, we keep each tender or batch of oil as near separate as we can.

Q. How do you separate it if some remains in the pipe lines and some goes into the tanks?

A. We put 50,000 barrels in the line and we get another 50,000 and put in the line. One 50,000 displaces the other.

568 Q. As to the 50,000 barrels, some stays in the pipe lines and some goes into the tanks, is that not true?

A. It all stays in the pipe lines until it goes out to delivery.

Q. Didn't you put it in tanks as you go along between Morgantown and Marcus Hook, if you started a column of 50,000 barrels of oil?

A. We don't store it in tanks, no, sir.

Q. And don't pump it from tanks?

A. We started from tanks, yes, and we pump in the lines against—or pump at the next place, and if one pump pumps more than the other, some would pass into the tank, and at the relay station, that we say in the next one we may use, some oil is stored in the tanks.

Q. Otherwise it goes straight through the line?

A. Yes.

Q. That is irrespective of the quantity of the oil that you are handling during the course of a month or the course of a year you pump from the lines except where necessity compels you to go into the tank as you have described?

A. Each tender is treated in like manner.

Q. You don't handle any oil in your line you have been referring

to except for this refinery at Marcus Hook, Pennsylvania that you have referred to?

A. That is all the oil we handle.

569 Q. And all the oil, whether consigned on an I. C. C. tariff or on your own tariff, goes to Marcus Hook, Pennsylvania to the same consignee?

A. Yes, sir.

Q. And you do not handle any oil for anybody else in that line?

A. No, sir.

Q. You do not accept deliveries for anybody else in your line, do you?

A. We have not been offered any yet.

Q. But you are not prepared to accept deliveries to anybody else, are you?

A. I don't know how you mean that.

Q. Have you any other pipes that go into anybody's tanks?

A. No, sir.

Q. After they leave your line?

A. No, sir.

Q. Except to the one consignee you have referred to?

A. No, sir.

Q. And that is the only consignee that you accept deliveries for, and it is the only consignee that you are prepared to deliver oil to, isn't it?

A. The only consignee we have got our lines connected to, yes.

570 Q. Then it is the only one you are prepared to deliver to at this time?

A. Yes.

Q. You would have to make additions to your pipe lines to deliver to anybody else, wouldn't you, or extensions?

A. We would have to, yes, sir.

By Mr. Crawford:

Q. Mr. Breiner, does not your company receive a small amount of Mid-Continent oil from the Eureka Pipe Line Company at your station near Morgantown?

A. Yes, sir.

Q. I do not understand that you have mentioned that. That Mid-Continent Oil is handled in the same way as the other that you have described? It is moved in batches, isn't it?

A. Yes, sir.

Q. And when you have a batch of Mid-Continent oil you put it in behind a batch of something else?

A. Yes.

Q. And in front of a batch of something else?

A. Yes, sir.

Q. Is there any mixture between the Mid-Continent oil and other oils except what takes place in the pipe due to the abut-ing of the two columns?

A. No, sir.

Q. And you forward that Mid-Continent oil into the State
571 of Pennsylvania and so on, just like the rest, do you?
A. Yes, sir.
Q. And all that you have testified to to-day is correct as to the period of twelve months from July 1, 1918, to June 30, 1919?
A. Yes, sir.
Q. This Mid-Continent oil which you received from the Eureka Pipe Line Company came to you and comes to you through a different pipe than the Pennsylvania, did it not,—than the Pennsylvania grade?
A. Yes.
Q. You did not mean to testify, if your answers read that way, you did not mean to testify that you received Mid-Continent crude and Pennsylvania crude through the same pipe?
A. No, sir.

By Mr. Avis:

Q. How many pipes of the Eureka connect with your tanks at Morgantown?
A. I told you there was one for the Pennsylvania grade. You were talking about Pennsylvania then,—a pipe line for the Mid-Continent oil.
Q. What is the size line of the pipe line for the Mid-Continent oil?
A. Right at the tank? All I have ever seen of it——
Q. How large?
572 A. What I have seen at the tank is six inches.
Q. Put it 100 feet from the tank, what size is it?
A. I don't know. I was not there when they built it.
Y. How far from the tank is the six inch size where you saw it?
A. Right at the tank.
Q. About how far from it?
A. Right up along the tank.
Q. Give it in feet or inches?
A. I may say the pipe parallels the tank practically about six inches and goes up along the tank into the tank.
Q. And that is all you have ever seen of that pipe. about six inches of it?
A. No, I know it is six inches about sixteen inches from the shell of the tank.
Q. And the one that handles the Pennsylvania grade oil is the same size?
A. Yes, at the tanks.
Q. And the valves for both of those lines are controlled and regulated by the Eureka Pipe Line Company?
A. Yes.
Q. Are you sure that during the year ending June 30, 1919, you handled any Mid-Continent oil?
A. I think there was some oil received, yes.
Q. You think so, but are you sure?

573 A. I feel certain that we handled some.

Q. Will you swear positively that you handled any during the period ending June 30, 1919, of the Mid-Continent grade of oil?

A. We have handled Mid-Continent oil——

Q. That is not my question. The question is, will you swear positively that you handled any Mid-Continent grade of oil for the twelve months ending June 30, 1919, that you received from the Eureka Pipe Line Company?

A. My recollection is that we received two tenders in the period of time mentioned there.

Q. You swear to that positively, will you?

A. I believe I am right in making that statement, yes.

Q. But you won't swear to that positively, will you?

A. I cannot swear to just what months we got it in.

Q. Can you swear positively that you got any during the twelve months ending June 30, 1919, I mean of your own knowledge?

A. Yes, sir, I am satisfied we got it.

Q. About what time, was it in 1919, or 1918, that you think you got some?

A. I think in the latter part of 1918 we got some.

Q. Do you know how much?

A. I don't know as to the number of barrels, no.

574 Q. That was placed in the same tanks in which you placed that Pennsylvania grade of oil, wasn't it?

A. Yes, sir.

Q. And there was some mixture in those tanks, wasn't there? Because you did not take out all the oil out of the tanks, did you?

A. We don't leave any oil in the tanks?

Q. Don't you leave some?

A. Possibly 25 to 50 barrels in the bottom of the tanks. We empty our tanks.

Q. What sized tanks? Wouldn't there be a greater quantity in the 35,000 barrel capacity oil tank than there would be in the 5,000 barrel capacity oil tank?

A. If you emptied them there would not be.

Q. I am asking you if you do not leave some quantity in both of those tanks and wouldn't there be more left in the large tanks than in the small tanks?

A. If you would consider twenty-five or thirty barrels any quantity, there would be about that much left in.

Q. In the large sized tanks?

A. In either one of the tanks.

Q. Then there would be some mixture of the two grades of oil in those tanks, would there not, when they got into the pipe lines, to that extent?

A. To the extent of that yes, if you consider that anything.

575 Q. Well, it would be double that quantity, would it not, really? There would be—How many barrels did you say, twenty-five to fifty barrels, left in the bottom of the tank?

Mr. Crawford: Twenty-five to thirty he said.

A. Twenty-five to thirty barrels.

Q. Left in the bottom of the tank; and then, if you had a 35,000 barrel tank you would mix up the whole 35,000 barrels with that twenty-five or thirty barrels, would you not?

A. No.

Q. In the tanks?

A. We would put whatever we received in the tank on top of what was in there.

Q. And every time you changed the grade of oil that went into your tanks there would be a slight mixture, would there not?

A. Oh, that little bit that we spoke of, yes.

Q. How did you handle this Mid-Continent oil that you are referring to, on I. C. C. tariff?

A. No sir.

Q. Then it was just a delivery of Mid-Continent oil to you in your tanks at Morgantown by The Eureka Pipe Line Company, was it not?

A. Yes sir.

Q. And not handled on an I. C. C. tariff?

A. No.

576 Q. That is, you mean it was not handled on an I. C. C. tariff?

A. That is it.

Q. That is the idea. And did you handle it on a local tariff?

A. On our own tariff, yes, from there in.

Q. But you do not know where that tariff showed it was shipped from or where it showed it was consigned to, do you; whether from a point in West Virginia or a point in Pennsylvania, to Marcus Hook, Pennsylvania, do you?

A. Read that question, I did not get it.

Q. (Pending question read.)

A. We were advised that we were getting, we were to get, Mid-Continent oil, and for us to pump it to Marcus Hook, to the Pure Oil Company.

Q. The Pure Oil Company advised you?

A. Yes sir.

Q. And it was delivered in your tank at Morgantown by The Eureka Pipe Line Company; that is true, is it not?

A. Yes sir.

Q. And then pumped by you to Marcus Hook, Pennsylvania?

A. Yes sir.

Q. But you are not sure whether it really went forward on a tariff or not, are you?

A. It went through on a tariff of the Pure Oil Pipe Line Company.

577 Q. How do you know whether it did or not?

A. They have a tariff posted.

Q. Well, they have a tariff posted, but you don't know whether it went forward on that tariff or not, do you?

A. Well, that is the way I was advised it was handled, that way.

Q. That tariff showed the rates from what point to what point?

A. From Morgantown to Marcus Hook.
Q. Are you sure of that?
A. Yes, I am sure that there were tariffs posted for that.
Q. Of that kind?
A. Yes sir.
Q. But you are not sure that that Mid-Continent oil went on that tariff, are you?
A. Yes sir.

Mr. Avis: That is all.
Mr. Crawford: That is all.

Deposition closed.
Signature waived by consent of counsel.

VERNON S. SWISHER resumed the stand.

Direct examination.

By Mr. Crawford (continued):

578 Q. Mr. Swisher, have you read over the stenographer's minutes of your testimony given at the previous hearing?
A. Yes sir.
Q. And have you discovered some errors that you desire to correct?
A. I have.
Q. I call your attention to the question on page 310, near the bottom. "Q. Well, tell us how much? A. It is 5,497.51 barrels." Are those the correct figures, or do you desire to make some correction there? I hand you a paper which you yourself prepared, did you not?
A. Yes sir.
Q. And with permission of counsel I ask you to refresh your memory by it. If counsel desire to see the paper I will show it to them; it is just a memorandum.

Mr. Avis: That is all right; proceed, Mr. Crawford.

Q. State what correction you wish to make there?
A. The answer should be 7,496.60, instead of 5,497.51.
Q. On the following page, 311, you said, "that would leave a total for the Pennsylvania grade of 6,240,911.24." Do you desire to correct that?
A. Yes sir.
Q. What are the correct figures?
A. 6,238,912.15 barrels.

579 Q. On page 312 you answered to one of my questions, 6,510,081.51. What are the correct figures for that?
A. The correct figures are 6,508,082.42.
Q. On page 313 I asked you whether the total of all Pennsylvania grade crude which was produced in West Virginia and which was transported and delivered by you during the twelve months ending June 30, 1919, wheresoever and to whomsoever delivered, amounted

to 6,510,081.51, and you answered, "Yes sir." Do you desire to change that answer?

A. Yes sir.

Q. What do you wish to say?

A. The correct amount is 6,508,082.42.

Q. At page 335, in two questions I spoke of the total of 4,372,-524.55 barrels, to which you assented; at least you assented to the first one, and it seems that that contained an error. Will you state what the correct amount was?

A. The correct figures should be 4,368,244.92.

Mr. Crawford: The same correction should be made in the third line from the bottom of the page.

Q. In view of the corrections you have made, will you state what corrections should be made in your answer appearing at the top of page 336 of the minutes?

A. The amount in the first line at the top of the page should be 4,360,748.32, and the second amount, of the Cabell oil, should be 7,496.60.

580 Q. On page 337 the amount, given twice, is 4,367,027.04. Should that be corrected?

A. Yes sir, the amount should be 4,360,748.32.

Q. And that is the same at the end of my question, again on that page?

A. That amount, given twice on this page, is incorrect, yes sir.

Q. On page 339, in the place where the amount of Cabell oil is mentioned, the sixth line, the figure 5,497.51 ought to be 7,496.60, ought it not?

A. Yes sir.

Mr. Crawford: There are one or two other corrections which cannot be made so quickly and will require some testimony, and I will not keep you here any longer for that but will put them over until tomorrow.

Mr. Avis: I was wondering, Mr. Crawford, whether those large figures on page 339 are correct?

Mr. Crawford: Will you not go over all those figures to-night and see that we get them straight finally, because it is very important that we get them straight. It is not of any great consequence what they are, except that they should be right and that they should agree.

Adjourned until Tuesday, December 2, 1919, at 10:15 A. M.

581 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et als.

New York, December 2, 1919.

Met pursuant to adjournment.

Appearances:

For the plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.
For the defendants: S. B. Avis, W. Gordon Mathews.

VERNON S. SWISHER resumed the stand.

Direct examination.

Continued by Mr. Crawford:

Q. Mr. Swisher, I want to complete the corrections we started on yesterday afternoon, and I call your attention to certain figures on page 338 and hand you the same memorandum which you had yesterday and ask you to refresh your memory by it and state any corrections which should be made on that page.

A. Near the bottom of the page the amount 4,367,027.04 is incorrect. It should be 4,365,027.95.

Q. Is there any other on that page?

A. Yes, also the last amount shown on the page as

582 4,362,747.41 should be 4,360,748.32.

Q. On page 335 there is a reference to the item of 4,279.63 barrels, which is an item that appears in the table on sheet 2 of Plaintiff's Exhibit 4 of November 20, 1919. Do you wish to make any observation in regard to that entry there? In order that you may answer intelligently I hand you the minutes at page 335 and also hand you Plaintiff's Exhibit 4, and I call your attention to the item 4,279.63 on sheet 2 of that exhibit.

A. The item of 4,279.63 barrels does not properly belong in the total on the table of sheet 2. This oil prior to the period covered by this report had been moved on Eureka tariff I. C. C. 135 to Bayonne, New Jersey, subject to a three year stop-over privilege at Centerbridge, Pennsylvania. During this three year period this amount was found not to have moved on to Bayonne, and The Eureka Pipe Line Company were paid an addition in rate, making it equivalent to the rate that they would be entitled to on Eureka I. C. C. 142 for Centerbridge.

Q. What was that amount additional that was paid?

A. In money?

Q. Yes.

A. It was $29.53.

Q. Then is this what you mean, that this item of 4,279.63 barrels and the corresponding figures of rate and transportation
583 charges received should be taken out of the place where it is in this table and placed below as a separate item?

A. Yes sir.

Q. Your point being that while it is proper for the company to account for the amount received because it was a part of the income of that year, as the actual oil was not delivered during that year it ought not to come in the table above?

A. Yes sir.

Q. If you took out that amount of 4,279.63 from the total which is given on this sheet 2 of 4,372,524.65, what would your total be then?

A. The total would then be 4,368,244.92.

Q. And then if you insert this item of 4,279.63 below the final result would be the same so far as income is concerned, would it not?

A. Yes sir.

Q. What is this amount of .0069 under the column marked "rate" and opposite the item of 4,279.63 barrels?

A. That is the difference between the Centerbridge rate and the Bayonne rate. The Centerbridge rate is so much shorter and they would be entitled, owing to the stoppage of this oil, to a little additional rate.

Q. Who would be entitled?

584 A. The Eureka Pipe Line Company.

Mr. Avis: I understand it is not a part of the through rate, but it is changed because of the stopover privilege.

The Witness: Yes sir.

Q. This total that you say you get by making that deduction of 4,368,244.92 is to be compared with the total on that first page just above the middle of 4,368,714.41, is it not?

A. It is.

Q. And there is an apparent difference between those two items, or rather an actual difference of 473.49 barrels. Will you explain that discrepancy?

A. That difference is caused on account of the overlapping, on account of the double handling of some oil from Core, West Virginia.

Q. I hand you Plaintiff's Exhibit 3, Third Map, and ask you from that map to show the course of oil to which you refer and explain just how this overlapping occurred?

A. The oil moves——

Q. (Interrupting.) We are talking now about a certain twelve months. Use the past tense.

A. The oil moved from Core over the Pennsylvania State line to the South West Pennsylvania Pipe Line Station at Mt. Morris. It then moved from the South West Pennsylvania Pipe Line
585 over the State line to The Eureka Pipe Line Station at Morgantown.

Q. You mean it did move at the time in question?

A. Yes, it then moved from Morgantown over the State line to the Southern Pipe Line.

Q. How does this apparent discrepancy arise? Tell me generally. I don't ask you to tell me so many barrels of this or that, but tell me in a general way how this overlapping you speak of arose?

A. When the oil first was delivered from core it was delivered to the South West Pennsylvania Pipe Lines and is in the total on sheet 1.

Q. You mean to say it appears in the total deliveries?

A. The total deliveries.

Q. Which are represented by this amount of 4,368,718.41?

A. Yes sir.

Q. Why is it that the corrected total on sheet 2 is less than this total on sheet 1?

A. Well, the first movement of that oil was to the South West, and is covered by that period. Some of the oil did not finally move out from Morgantown until a later period.

Q. Is this what you mean, that this amount of 473.49 barrels was delivered to the South West Pennsylvania Pipe Line Company during the twelve months in question, and it therefore ap-
586 pears in the total of deliveries on sheet 1; that it returned into West Virginia and was not delivered for the second time to the Southern until after the expiration of the twelve months?

A. That is the explanation.

Q. And therefore while the gathering charge is entered on account of the delivery, the portion of the tariff rate which would have been earned when the oil was finally delivered to the Southern had not yet been earned on June 30th, 1919?

A. That is the explanation.

Q. And therefore it does not appear in the second sheet as actual earnings during that period?

A. Yes sir.

Q. This difference of 473.49 barrels does not appear on either of those sheets expressly in those figures, does it?

A. No sir.

Q. But it is included in the total of 4,368,718.41 on the first sheet?

A. It is.

Q. And not included in the total nor anywhere else on the second sheet for the reasons you have stated?

A. Yes sir.

Q. I call your attention to another passage in the testimony relating to this same matter, on pages 341 and 342, in which
587 I unintentionally misled you. This testimony appears:

"Q. Is this the explanation, that on the oil which crosses the State line twice in the process which you describe, which I judge to have from your figures 473.49 barrels——

A. Yes sir.

Q. During the twelve months in question?

A. Yes sir.

Q. You count it twice in the table on sheet 1 because it is delivered twice?

A. Yes sir.

Q. But you only charge for it once, and therefore the total as indicated in the sheet, in the total on sheet 2, would be somewhat less than the total on sheet 1?

A. Yes sir."

And further testimony follows based upon the same idea. In view of what you have just testified, are those questions and answers correct? If not correct them. That is, will you now state what the actual fact is?

A. It only appears once in the table in sheet 1.

Q. And I was not correct in implying in my question and you in assenting to it that you counted it twice because it was delivered twice?

A. I did not intend to convey that idea.

588 Mr. Crawford: I offer in evidence Plaintiffs' Exhibits for Identification from 5 to 31 inclusive, and number 33, which are copies of certain tariffs, other copies of which were filed with the bill, and I ask that it be agreed that the corresponding copies so filed with the bill be marked as the original exhibit, but that any printed copies thereof, including the identical printed copies which were marked for identification and have been referred to by the witnesses, may be used with the same force and effect as the originals, and it is stipulated that the same shall not be printed into this record, but reference is made to the copies attached to the bill referred to; and that in any printing or preparation of the record that is subsequently done, only those attached to the bill need be printed.

Mr. Avis: That is agreeable.

Q. Mr. Swisher, on sheet 1 of this Plaintiffs' Exhibit 4, of November 20, I read in the second table the words "Oil produced in West Virginia and delivered to other carriers in West Virginia for interstate transportation," and underneath that "Pure Oil Co., Morgantown, W. Va." In fact, was this oil delivered to the Pure Oil Company by The Eureka Pipe Line Company, and if not to whom or what company was it delivered?

589 Mr. Avis: I object to the question on the ground that the heading of that item incorporated in the question is misleading, because it does not appear that it was delivered for interstate transportation and the witness in previous questions said that he did not know whether it went into interstate commerce or not.

A. It was delivered by The Eureka Pipe Line Company to the Pure Oil Pipe Line Company.

Q. Now Mr. Swisher, you have made several corrections in this Plaintiffs' Exhibit 4, and I think it is desirable that the court should have the correct table before it, and I am going to ask you if you will prepare a revised table which will be the same as this except for

this correction as to the words "Pure Oil Co.," etc., that you have just made, and the correction about the 4,279.63 barrels appearing in the table on sheet 2, and bring it with you at the session to-morrow. I don't want any change which is an inferential change from the testimony. I simply want these two changes and any others if there be any others, which is an obvious mistake. If you now think of any other just mention it so that we may have this clear?

A. I had some Cabell oil and Pennsylvania grade oil in there. Do you want separate tables for those?

Q. No, that was not a mistake. That was simply a conclusion. I don't — any change in that. I simply want a revised exhibit which will correct these two mistakes.

590 Mr. Avis: The defendant objects to so much of Plaintiffs' Exhibit 4 as would indicate from the language thereof that any oil or any certain oil was delivered for "interstate transportation" or for "transportation outside the State of West Virginia," and make the same objection to a revised exhibit 4 that would show the use of such words for the arriving at such conclusions by the witness, on the ground that these are mere conclusions of the witness and are otherwise improper and immaterial.

this map lines indicating the course of certain pipe lines referred to in At a former session it was agreed that you might have placed upon this map lines indicating the course of certain pipe lines referred to in the tariffs and not upon the map as first offered. Have you done so?

A. Yes sir.

Q. Will you please state what additions have been made?

A. The line of the Yarhola Pipe Line Company appears on this map; the Terminal Cushing, Oklahoma, runs through the State of Oklahoma and the State of Missouri, to Wood River, Illinois. There is also an addition to the Prairie Pipe Line Company's line, showing a connection from Manuel, Oklahoma, in the State of Oklahoma, through to Bartlesville, Oklahoma.

Q. There connecting with what?

A. There connecting with the Prairie Pipe Line Company's lines.

591 Q. Is the result so far as the Prairie Pipe Line Company is concerned that there is a through connection shown without the necessity of using any part of the Oklahoma Pipe Line Company between Drumright and Glen Pool, Oklahoma?

A. Yes sir.

Mr. Crawford: It is conceded that the changes thus made in Plaintiffs' Exhibit 32, First Map, are made with the consent of both sides.

Mr. Avis: Yes.

Mr. Crawford: And shall have the same force as if upon the exhibit when first offered?

Mr. Avis: Yes sir.

Q. I show you Plaintiffs' Exhibit 32, First Map, and call your special attention to the part of this which shows the State of Pennsylvania and pipe lines running through that State as you have

heretofore testified. I show you at the same time another map and ask you what that other map is or what it represents.

A. That represents pipe lines running through the State of Pennsylvania.

Q. What relation do they bear to the map marked Plaintiffs' Exhibit 32, First Map?

A. The general lines seem to be the same.

Q. We don't want anything that seems. We want to know.

592 Does this new map which I offer to you show the same pipe lines as were shown in the State of Pennsylvania in the Exhibit 32, First Map but on a larger scale?

A. It does. There are some changes. There are some additions.

Q. First let me ask you, do you find on this new map all the lines which appear on the old map as representing the course of the pipe lines or pipe line system in the State of Pennsylvania? I mean to say are there any omissions in the second and larger map?

A. Yes sir.

Q. State first what omissions there are?

A. There is an omission, from Nedskey to Pittsburg.

Q. Will you please now place that upon the map by suitable lines?

A. Yes sir.

Q. Do you know of any other omission?

A. Yes sir.

Q. Will you before the next session examine these maps carefully, and if you find any other omission from the second map shown you now, have it placed upon the map?

A. Yes sir.

Q. Are there any additions on the second map, in other words do you find any lines laid down which do not appear upon

593 Exhibit 32, First Map? When I say lines I mean lines indicating a course of pipe lines.

A. There is a line that appears on this second map that does not appear on the first running from the Pennsylvania State line and connecting into the South West Pennsylvania Pipe Lines, on the Southwestern Pennsylvania Pipe Lines.

Q. You refer to a line which appears to cross the State line between Pennsylvania and West Virginia, and intersects that part of the line of the South West Pennsylvania Pipe Lines which extends from Ewings in the direction of Morgantown?

A. Yes sir.

Q. To save time I ask you to continue this comparison at recess and be prepared at the opening of the next session to state whether there are any other additions which do not appear on the map Exhibit 32, First Map.

A. Yes sir.

Mr. Crawford: I now offer this map in evidence and ask that it be marked Plaintiffs' Exhibit 34, Fourth Map, with the understanding that if it appears there are any lines indicating pipe lines which appear on Exhibit 32, First Map, in the State of Pennsylvania that have been inadvertently omitted from Plaintiffs' Exhibit 34, they may be added.

Mr. Avis: We have no objection to the corrections being made and we make no objection to such corrections, but reserve the
594 right to object to the admission in evidence of this map, as well as any other map heretofore introduced in evidence on the ground that same are immaterial and incompetent.

Mr. Crawford: I have no objection to the reservation.

Map received in evidence marked Plaintiffs' Exhibit 34, Fourth Map.

Mr. Crawford: I offer in evidence the tariff, I. C. C. number 151 of The Eureka Pipe Line Company, local tarrif-, which is attached to the bill and ask that it be marked Plaintiffs' Exhibit 35, and request that the same understanding may apply to this as to other tariffs in evidence, namely, that any official printed copy of the same may be used with the same force and effect as the original.

Mr. Avis: That is agreeable.

Tariff received in evidence marked Plaintiffs' Exhibit 35.

Mr. Crawford: And only the original attached to the bill to be printed or otherwise included in the record?

Mr. Avis: That is agreeable.

Q. Mr. Swisher, when The Eureka Pipe Line Company receives oil from a producer in West Virginia how is the transaction recorded in books of the company?

A. He is given a credit on the production oil book for
595 the amount of oil run to his credit.

Q. You mean the producer?

A. The producer.

Q. What do these production oil books consist of? I am speaking now from the bookkeeping standpoint. I may not make myself clear. Where is the amount of oil received first entered?

A. On the run sheets.

Q. Are these run sheets detached sheets?

A. Yes sir, loose leaf.

Q. Do you make entries for different amounts of oil received from different persons from the same sheets, or may that happen?

A. Yes sir.

Q. In other words, is that run sheet similar to the day book of the ordinary merchant?

A. Yes sir.

Q. Do you carry that item anywhere else, and if so where in your books?

A. We place it to the credit of the producer on the ledger.

Q. That is the ledger of what you call that production book?

A. The production book ledger.

Q. And how is that ledger account kept with the producer?
596 Is it a debit and credit account?

A. It is a debit and credit account.

Q. And upon the credit side these entries appear?

A. To his credit account appears the runs he is credited with.

Q. When you say the runs you mean the amount of oil which you have received from him at different times?

A. Yes sir.
Q. Those are entered to his credit?
A. Yes sir.
Q. What appears on the debit side of that account?
A. The transfers or sales that he makes.
Q. What do you mean by a transfer or a sale?
A. The party that buys the oil from him; he transfers the oil to the purchaser and it is entered then to the credit of the purchaser, on the general oil books of The Eureka Pipe Line Company.
Q. It is first entered as a debit, is it? The amount so transferred is first entered as a debit to the producer on the production books?
A. Yes sir.
Q. And do you distinguish between transfers and purchases or do you mean the same?
A. I mean the same.
597 Q. Suppose that the producer does not sell his oil but orders it to be delivered somewhere, what entry would be made for that and where?
A. We would take his credit balance off the production books and credit it up to him or to whoever he sells it to in the general oil books.
Q. I don't think you quite get my question. I want you to confine yourself to this original ledger account and the production books. On the credit side you say you credit him or rather you credit the producer with all the oil you receive from him?
A. Yes.
Q. The amount having been posted from run sheets of the general character of day books?
A. Yes sir.
Q. And on the debit side you charge him with oil which he sells and which is transferred from a purchaser?
A. Yes sir.
Q. I ask you this, suppose he does not sell and orders his oil delivered, what entry would appear in this ledger account in the production books?
A. We would debit his account for any oil that was delivered out of his account.
Q. And if the amounts sold and transferred and the amounts delivered were equal to the amount with which he was credited,
598 that would balance the account?
A. Yes sir.
Q. You used the words "credit balance" a moment ago. Will you please explain what you mean by "credit balance"?
A. Credit balance means——
Q. You will make it clear if you will follow this analysis we are making of these accounts. Make your answer along the line of this ledger account which you are trying to explain, if it is connected with that?
A. Credit balances are credits on the production books of the account of oil run to their credit, to the producer's credit.
Q. Would a credit balance include all the oil that had been run

to him or only what was left over after deducting what you had credited him with?

A. Only the balance left over.

Q. Then the credit balance of the producer would mean, would it, the amount standing to his credit in his ledger account after deducting what he had either sold or had ordered it to be delivered?

A. Yes sir.

Q. Assume that he has sold some part of his credit balance, how is that entry made and where?

A. His account is debited on the production books.

599 Q. And does it appear anywhere else?

A. And it is credited on the general oil books to the party to whom the transfer or sale is made.

Q. And then does the same proceeding go on in that second ledger account? That is to say, is the purchaser debited with that oil until it is disposed of in some way?

A. Yes sir.

Q. Suppose the first man, the producer, has ordered this oil to be delivered at some point, and I understood you to say that that appeared first as a debit to the ledger account of the production books. That was correct, was it?

A. Yes sir.

Q. Does it appear anywhere else in your books, the oil having been ordered for delivery, or is that the final entry?

A. That is the final entry.

Q. On the ledger account, in the general oil books as I think you called them——

A. Yes sir.

Q. Does anything appear except entries of credit balances which have been bought by some second party? I mean on the credit side of course.

A. Yes sir, for all the oil received in the course of transportation credits are given for any such oil received.

Q. Do you mean to say that after the oil is ordered to be
600 delivered, that it appears as a credit on the general oil books to the credit of the person ordering it or what do you mean?

A. Are we speaking of production oil now? The oil produced in West Virginia?

Q. Yes. The question is, do you mean to say that after oil is ordered to be delivered, that it appears as a credit on the general oil books to the credit of the person ordering it, or if not what do you mean?

A. Yes, sir, that is the custom. When oil is put in for delivery it is taken off the production books and put on the general oil books.

Q. And then when it has been delivered I suppose the amount of the delivery is entered as a debit so as to balance that credit, is it?

A. Yes, sir.

Q. When you receive oil and you enter a credit on your production books, what becomes of the physical oil, the actual oil?

A. The physical actual oil moves on in the usual channel or stream towards—well, it always moves forward.

Q. Unless it has been delivered within the State of West Virginia, where does it move to?

A. It moves outside the State.

Q. In other words the actual physical oil does not stop
601 on account of any of this matter of credit and debit entries or transfer from a production account to the general oil account?

A. No, sir.

Q. Actual oil is in the stream which is run through the State of West Virginia and out into another state unless it has been delivered to refineries within the State?

A. Yes, sir.

Q. And what you are speaking of when you speak of oil transferred from the producer to purchaser and ordered for delivery and debited, etc., you mean these various credit balances, is that right?

A. The credit balances, yes.

Q. I hand you a paper and ask you if that is the form used in the business of The Eureka Pipe Line Company when a producer sells oil and desires to make a transfer of it. (Handing paper to witness.)

A. Yes, sir.

Mr. Crawford: I offer this in evidence and ask it be marked Plaintiff's Exhibit 36.

Paper received in evidence marked Plaintiff's Exhibit 36.

Q. And that transfer is a transfer of a credit balance or part of a credit balance, is it?

A. Yes, sir.

602 Q. This ticket marked Plaintiff's Exhibit 36, is signed by the producer, is it, or at any rate it is signed by the owner who is transferring his rights?

A. Yes, sir.

Q. And after the words "transfer to credit of" is inserted the name of the purchaser?

A. Yes, sir.

Q. And then I understand you that when you receive such a ticket as that filled out, you charge the producer with the amount so transferred? That is, you charge it on the ledger accounts or production books and you enter it on the ledger account of the general oil books to the credit of the purchaser?

A. Yes, sir.

Q. I show you another paper and ask you what that paper is? (Handing paper to witness.)

A. That is the shipper's order for delivery of oil by pipe.

Q. This is an order which you receive from the owner of the oil, whether it be the original producer or the purchaser, when the delivery is desired at a certain point?

A. Yes, sir, in West Virginia.

Q. That delivery of course is made out of the common stock, is it?

A. It is.

Q. And in the custom of your business, in the way the business

is carried on, it is not understood that this means you are to
603 deliver to anybody anywhere the identical physical oil which you at some time previous received and of which there is a corresponding credit balance on the books of your company.

Mr. Avis: We object to the question on the ground that it calls for a conclusion of law and is otherwise immaterial and irrelevant and is in conflict with his previous answer.

A. No, sir, we deliver out of the general stock of the grade of oil called for on the order.

Q. You mean the general stock of that oil in the possession of the company?

A. Yes, sir.

Mr. Crawford: I offer this paper in evidence.

Paper received in evidence marked Plaintiff's Exhibit 37.

Q. Do orders in the form of Plaintiff's Exhibit 37, apply to deliveries which are to be made for transportation out of the State of West Virginia as well for those to be made within the State?

A. Yes, sir.

Q. This is only for what?

A. For deliveries within the State.

604 Q. In the case of oil which is ordered to be delivered for transportation out of the State, what paper, if any, do you get?

A. What we call an interstate tender of shipment.

Q. I show you a paper and ask you whether that is the blank form used for such tenders of shipment?

A. Yes, sir, it is.

Q. It seems to be in two parts, which are identical except for the words "original" and "duplicate." Will you explain that point?

A. The original is retained by The Eureka Pipe Line Company, the duplicate is given to the shipper.

Q. Otherwise than those two words, the two parts are identical, are they not?

A. They are.

Mr. Crawford: I offer that in evidence and ask that it be marked Plaintiff's Exhibit 38.

The paper was marked Plaintiff's Exhibit 38 of this date.

Q. When you receive a paper which you characterize as a tender, in the form of Plaintiff's Exhibit 38, does your company issue any notice in regard to it?

A. Yes, sir, they issue notices to all carriers a party to it.

605 Q. You mean all subsequent carriers to The Eureka?

A. All subsequent carriers.

Q. Although it is a little apart from my general line of examination, yet I think it may be clearer for the court if other similar documents attached to the bill should be explained at this point;

and I therefore show you a paper attached to the bill, marked "Sample Copy" and purporting to be a tender of shipment at sundry points in Kentucky via Morgantown, West Virginia, to be delivered to the Atlantic Refining Company at Point Breeze Station, Philadelphia, Pa., of 75,000 barrels of Somerset oil, signed by the South Penn Oil Company, by P. S. Trainor, Esquire, and Thomas G. Burns, and on the lower left hand corner, appear the words "accepted, Cumberland Pipe Line Company." Is this in the form of tender that you receive and did receive during the twelve months in question, from time to time, from the Cumberland Pipe Line Company, for shipments of Somerset oil made from Kentucky points?

A. Yes sir, that is the form issued by the Cumberland Pipe Line Company.

Q. And are the two parts of it marked "duplicate" and "original" the same except for those two words?

A. Yes sir.

Q. And I suppose, as in the former case, the one marked "original" is retained by whom?

606 A. The originating pipe line company.

Q. In this case the Cumberland Pipe Line Company?

A. The Cumberland Pipe Line Company.

Q. And the copy of the tender is delivered to whom?

A. The South Penn Oil Company, the shipper.

Q. That being the shipper in this instance?

A. Yes sir.

Q. You mean it is kept by the shipper?

A. Yes sir.

Q. Which happens to be the South Penn Oil Company in this instance?

A. Yes sir.

Q. What does your company receive in such a case?

A. The Cumberland Pipe Line Company issue a notice of such tender.

Q. Issue it to whom?

A. To The Eureka Pipe Line Company, or to all parties that are interested in the movement of the oil on that tender.

Q. What do you mean by all parties?

A. All pipe line companies.

Q. What do you mean by pipe line companies, or interested?

A. To handle the oil.

Q. Do you mean connecting carriers?

607 A. Connecting carriers.

Q. Those subsequent, in other words, to the Cumberland Pipe Line Company?

A. Yes sir.

Q. Through whose lines or parts of whose lines the oil is to be carried, according to this tender; is that right?

A. Yes sir.

Q. Does it anywhere appear on the tender on what tariff the oil is to be carried?
A. Yes sir (indicating).
Q. In this exhibit it is I. C. C. tariff number 36, is it?
A. Yes sir.

Mr. Crawford: I ask that the paper referred to as tender of shipment, attached to the bill, be marked "Plaintiffs' Exhibit 39, Tender of shipment and acceptance."

The paper was marked Plaintiffs' Exhibit 39, Tender of shipment and Acceptance, of this date, the original being filed with the bill and so endorsed.

Q. I hand you another paper which is filed with the bill, and ask you whether that is a copy of a notice of tender which would have been normally issued in connection with Plaintiffs' Exhibit 39, Tender of Shipment and Acceptance?
A. It is.

608 Mr. Crawford: I offer that in evidence and ask that it be marked Plaintiffs' Exhibit 40, Notice of Tender.

The paper was marked Plaintiffs' Exhibit 40, Notice of Tender of this date, the original being filed with the bill and so endorsed.

Q. Upon this ticket Plaintiffs' Exhibit 40, Notice of Tender, I see after the word "rate" 50 cents. What does that mean?
A. That means the through rate from sundry points in Kentucky, to Philadelphia, Pa.
Q. And is that the rate specified in the tariff number 36 that is referred to on this ticket?
A. Yes sir.
Q. That is a rate that is filed with the Interstate Commerce Commission, is it?
A. Yes sir.
Q. In the first column under that are the names Cumberland, Eureka and Southern. What do those mean?
A. That shows the division of——
Q. No (indicating).
A. Oh, that means Cumberland Pipe Line Company, The Eureka Pipe Line Company and Southern Pipe Line Company.
Q. Why do those three names appear on this ticket?

609 A. Because those are the three pipe line companies that handle the oil.

Q. And on receiving this notice of tender do you undertake to deliver on this tender any identical 75,000 barrels of Somerset oil?
A. No sir.
Q. What do you do?
A. The same grade and quality, in our general stocks.
Q. And upon receiving this you make such a delivery to the Southern Pipe Line Company, do you?

A. Yes sir.

Q. Would there be a credit balance in favor of some one, against which you would make that delivery?

A. Yes sir.

Q. In favor of whom?

A. In favor of the party who issued the tender.

Q. Who is it, in this instance?

A. In this case it would be the South Penn Oil Company. They would receive the credit on The Eureka Pipe Line Company when the oil was received from the Cumberland Pipe Line Company; they would be debited——

Q. Where would that be, on the general oil books?

A. On the general oil books.

Q. Proceed.

A. The South Penn Oil Company would be debited when
610 delivery was made against that tender to the Southern Pipe Line Company.

Q. That is, they would be debited on the books against their credit balance, would they?

A. Yes sir.

Q. Is that course of business which is disclosed on Plaintiff's Exhibits 39 and 40 the same which is usually followed with shipments of oil which come to The Eureka Pipe Line Company from other carriers?

A. Yes sir.

Q. I hand you another paper and ask you what that is?

A. This is a notice of a tender of shipment, issued by the Prairie Oil and Gas Company, on the Prairie Pipe Line Company, tariff number 75, the amount being 100,000 barrels Mid-Continent oil, for delivery to the Standard Oil Company of New Jersey, Bayonne, New Jersey, price $3.47 per barrel, plus war tax on pipe line charges.

Q. What does that price mean; price where and of what?

A. It is the price at destination. It includes the price of oil and the pipage and the war tax.

Q. Have you anything to do with that price; I mean The Eureka Company?

A. No sir.

611 Q. In such a case as this, that is such a case as is indicated by this paper you have just read there, would you receive a notice like that from somebody?

A. We would receive a notice of that from the Prairie Pipe Line Company.

Q. And do you know whether the Prairie Pipe Line Company at the same time would issue notices to other carriers for the same transaction?

A. I am quite sure they would.

Q. You do not know personally?

A. No sir.

Q. All you know is that in such a case as this you get such a notice?

A. Yes sir.

Q. I hand you another paper; tell me whether that is an original notice which you have received from the Prairie Pipe Line Company in such a transaction, or in that same transaction?

A. Yes sir.

Q. All that you have said about the copy which I showed you first you would repeat in regard to this original?

A. Oh, yes, this would be the original (indicating).

Mr. Crawford: I offer that in evidence and ask that it be marked Plaintiffs' Exhibit 41.

The paper was marked Plaintiffs' Exhibit 41 of this
612 date.

Q. Do you receive notices of tender of shipment, similar to Plaintiffs' Exhibits 40 and 41, on other shipments that you receive from outside the State?

A. Yes sir.

Q. On all such shipments?

A. On all such shipments.

Q. After credit balances have continued on the production books of the company for a certain length of time, is there any charge made against the owner?

A. Yes, there is, a so-called storage charge.

Q. After what time is that charge made?

A. They are allowed to carry the credit balance anywhere from a period from sixty to ninety days.

Q. Before you make any charge?

A. Before we make that charge.

Q. What do you mean by sixty to ninety days?

A. The wording of the tariff I cannot recollect.

Q. Never mind the wording of the tariff; explain the fact; do you mean ninety days in all cases, or do you mean something between, or how do you estimate the time?

A. It is given on the tariff.

Q. Well, can you not state practically how it works? Take any given cause. Take the date when you enter the item of the
613 credit balance, if you please, as January 1st; now when, if at all, would the change be made against that credit balance?

A. If oil was run on January 1st, there would be no charge until March 31st, if it was held on the books until that time.

Q. Now suppose the original entry was made on January 15th?

A. There would be no charge until March 31st.

Q. Now then, is this the rule that you follow, that the charge is not made until the expiration of sixty days after the month in which the entry in the credit balance is first made?

A. Yes sir.

Q. When a charge is made what is the amount?

A. The rate?

Q. The rate, I mean.

A. It is one fortieth of one cent per barrel per day.

Q. When the credit balance is closed in one of the ways that you

have described, or debits are entered against it and a corresponding item is then entered in the general oil books as a new credit balance, when, if ever, is any charge made against the credit balance so entered?

A. Storage will begin on that balance ten days after such transfer, or until we receive a tender of shipment.

Q. You say storage will begin. You mean that this so-called charge will be made?

614 A. Yes sir, this so-called storage charge.

Q. And will the amount of it, that is the rate of it, be the same?

A. The rate is the same, yes.

Q. Now I show you a table and ask you to state generally what it is, without giving any figures?

A. It shows the amount of storage revenue earned during the period covered.

Q. When you say storage revenue, you mean as before, the revenue derived from this so-called storage charge, do you, of one fortieth of one cent per barrel per day, do you?

A. Yes sir.

Q. When it is charged; that is what you mean?

A. Yes sir.

Q. In addition to showing the amount of this revenue, what else does it show?

A. It shows balances not subject to the so-called storage charge.

Q. Well now, pardon me. Let me take it more in detail, perhaps we will get along better. This reads at the top, "credit balances on production books of oil produced in West Virginia and unconsigned, at close of each month during year ending June 30, 1919." What does the word "unconsigned" mean there?

615 A. No destination has been given for the delivery of their credit balance.

Q. You mean you have not received any order of shipment similar to Plaintiffs' Exhibit 37?

A. Yes sir.

Q. Nor any transfer ticket similar to Plaintiffs' Exhibit 36?

A. Yes sir.

Q. Nor any tender of shipment similar to Plaintiff's Exhibit 38?

A. Yes sir.

Q. And the credit balance remains on the production books therefor?

A. Yes sir.

Q. Now take the first item of the table, on the upper half of the sheet, that column of dates. What are those dates?

A. That means the credit balances at that time.

Q. No, it means the dates, does it not?

A. It means the dates, yes sir.

Q. What dates are they, what dates?

A. The last day of each month.

Q. Of each month of what twelve months?

A. Of the twelve months ending June 30th, 1919.

Q. Is that the way you keep your books in regard to these
616 credit balances? In making them up at the end of each month?

A. Yes sir.

Q. You have not adopted nor invented that system simply for this case?

A. No sir.

Q. Now the second column, under the head "total," what is that?

A. That is the total amount of credit balances on the production books at that time, opposite the dates.

Q. That is to say, on the last day of each of the twelve months?

A. Yes sir.

Q. And those amounts are taken from your books, are they?

A. Yes sir.

Q. In the next column under the words "not subject to so-called storage charge," there are certain figures. What are they?

A. That is the amount of credit balance that does not remain a long enough period for the so-called storage charge to be charged on it.

Q. I see; and the next column under the head of "subject to so-called storage charge," what does that tell?

A. That is the amount of credit balance that was subject to that charge.

617 Q. You mean the amount of the credit balances on the last days of the twelve months which are indicated, which had been on the books long enough to become subject to this charge under your system?

A. Yes sir.

Q. Under the head "amount charged," in the last column, we have certain figures in dollars and cents; what are those?

A. That means the amount of money charged. The total during that period was $5,779.20.

Q. That is, that is the total revenue received from the so-called storage charge, as applied to the amounts of credit balances in the fourth column?

A. Yes sir.

Q. Now underneath are the words "daily average," and certain figures across opposite. What does that mean?

A. That means daily average of those different columns.

Q. It really means the average of the last days of the twelve months, does it not?

A. Yes sir.

Q. Under each of the three separate columns?

A. Yes sir.

Q. The second half of the table is similar to the first, except it refers to credit balances on general oil books, does it not?

618 A. Yes sir.

Q. And the days are the last days of the twelve months, as before?

A. Yes sir.

Q. And in the column under "total" we have the total amounts

of credit balances, and in the next column, under the head of "not subject to so-called storage charge" we have the amounts that has not been held long enough to become liable to that charge under your system?

A. Yes sir.

Q. And in the next column the amounts which have become subject to the charge?

A. Yes sir.

Q. And in the last column the amount of the revenue received therefrom?

A. Yes sir.

Q. During the twelve months in question?

A. Yes sir.

Q. Below, opposite the words "daily average" you have certain amounts which I suppose are the averages of the last days of the twelve months?

A. Yes sir.

Q. That is, in the columns above that. And against the words "grand total." What are those figures?

619 A. That is the average of both.

Q. Both tables?

A. Both tables.

Q. And the total amount received by your company from this so-called storage charge on these credit balances which are set forth in this table is $6,003.99; is that correct?

A. Yes sir.

Mr. Crawford: I offer this table in evidence, and ask that it be copied into the record for convenience.

The paper was marked Plaintiffs' Exhibit 42 of this date.

620 Q. This $6,003.99 is the total of revenue during the twelve months in question from the so-called storage charge upon the credit balances that are shown on this sheet (Exhibit 42).

A. Yes sir.

Q. I hand you another table and ask you to state what it is?

A. This is a statement showing the amount of oil moved or pumped by the various stations of The Eureka Pipe Line Company, named in the I. C. C. tariffs which were in effect for the year or twelve months beginning with July 1, 1918, and ending with June 30, 1919; stations and amount pumped.

Q. Let us take Cabin Creek, opposite which appears the amount 269,170.27 barrels, of Pennsylvania grade oil. What does that item mean?

A. That is the amount that was tendered from Cabin Creek.

Q. What do you mean was tendered from Cabin Creek?

A. The amount of oil that was delivered to The Eureka Pipe Line Company at Cabin Creek, West Virginia, on I. C. C. tariffs, for delivery outside the State.

Q. With a tender of shipment?

A. With a tender of shipment.

Q. Does it mean that that number of barrels of physical oil was pumped from that station?

A. Yes sir, that amount of physical oil was pumped from
621 this station.

Q. Well, does it mean that the identical oil which was received was so pumped?

A. No sir, out of The Eureka Pipe Line Company.

Q. It means that that amount was pumped from a common stock, does it?

A. Yes sir.

Mr. Avis: How is that? Common stock of whom, I would like to know?

Q. I mean, common stock in the custody of The Eureka Pipe Line Company?

A. Yes sir.

Q. Is this item of 269,170.27 the same item which appears on Plaintiff's Exhibit 4, sheet 1, near the bottom?

A. Yes sir, it is.

Q. That oil was not gathered by The Eureka Pipe Line Company, was it?

A. It was not.

Q. No; it was delivered to The Eureka Pipe Line Company at Cabin Creek?

A. Yes sir.

Q. And delivered on I. C. C. tariffs which are mentioned on Plaintiff's Exhibit 4, sheet 1?

A. Yes sir.

622 Q. Now then, my question is whether you mean by this sheet in your hand that the identical oil which is mentioned on Plaintiffs' Exhibit 4 in making up this total of 269,170.27 barrels, was pumped from Cabin Creek in fulfillment of the tenders, or whether an identical amount of the same grade of oil was pumped from there for that purpose?

A. The same amount of the same grade of oil out of The Eureka Pipe Line Company's general stocks.

Q. Now take the item of Downs, 486,579.40 barrels. What does that mean?

A. That is the amount of oil pumped by Downs Station on I. C. C. tariffs.

Q. Well now, where did that oil originate? How did it come to your company?

A. It originated in West Virginia at various points, and was tendered by the shipper from that point.

Q. That is to say then, referring to Plaintiffs' Exhibit 38, he would under those circumstances have signed such a tender as Plaintiffs' Exhibit 38, which would read in part, "shipment is hereby tendered at Downs, West Virginia?"

A. Or other points named with Downs.

Q. Yes. But if there was only one point it would read "Downs," would it?

A. Yes sir.

623 Q. Then that tender, of course, would state a destination beyond the State of West Virginia?

A. Yes sir.

Q. Is the same course generally true of the other items in this column, omitting for the present those at Morgantown?

A. Yes sir.

Q. Is this oil which is indicated here as coming from Downs, oil which was gathered in the neighborhood of Downs?

A. No sir.

Q. Not necessarily?

A. No sir.

Q. Leaving out the items from Morgantown, is what you have testified to in the case of Cabin Creek also true as to the other items, namely that you do not mean to say that the identical physical oil which was received in these instances was pumped, but that an equivalent quantity of the same grade was pumped?

A. Yes sir.

Q. From the common stock of those grades in the custody of your company in transit?

A. Yes sir.

Q. Now take up the item of Morgantown, 3,638,517.02 barrels; what does that mean?

A. That means the amount of oil that was tendered on

624 I. C. C. tariffs from Morgantown, West Virginia.

Q. Well, it means also, does it not, that that is the amount which The Eureka Pipe Line Company, in consequence of those tenders, shipped from Morgantown and delivered at the State lines to other carriers?

A. Yes sir.

Q. When I say "shipped," of course I mean "pumped."

A. That is as I understand it.

Mr. Avis: I move to strike out the question and answer for the reason that I understand from the testimony that has already gone in in this case, that the tender of oil on I. C. C. tariffs to go outside of the State is not tendered by the shippers, but the tender to the connecting carrier is made by The Eureka Pipe Line Company.

Mr. Crawford: No, that is a mistake.

Q. In order to clear up the point raised by counsel for the State, I ask you by whom these tenders are made?

A. The tender is made by the shipper or owner of the oil.

Q. And what is it which the subsequent carrier receives? What paper does the subsequent carrier receive?

A. He received a notice of such tender.

Q. And in the case of tenders that are made to The Eureka Pipe Line Company under form similar to Plaintiffs' Exhibit 38, is the paper I show you the form for the notice of tender which is

625 given to subsequent carriers?

A. Yes.

Mr. Avis: I understand, I do not think I am wrong, I do not think the tender of shipment ever goes to the subsequent carrier. Am I right in that point?

Mr. Crawford: No, it does not.

I offer this form in evidence. As no number seems to have been reserved for it, I ask that it be marked Plaintiffs' Exhibit 38-*a*, so that it may follow immediately after Plaintiffs' Exhibit 38.

The paper was marked Plaintiffs' Exhibit 38-*a* of this date.

Q. Recurring again to the table which you have been referring to, there is an item at the bottom, "Butler District, Wayne County, 1,459.51 barrels Somerset oil." Explain what that is?

A. That was Somerset oil produced in West Virginia and delivered via the Cumberland Pipe Line Company back into the State of West Virginia again.

Q. That is the same item which has been referred to in the testimony of Mr. Kenney, is it not, of the small amount of Somerset oil gathered in West Virginia and which went into Kentucky and came back?

A. Yes sir.

626 Q. And that, so far as you are concerned, is pumped from where?

A. Pumped from the Butler District in West Virginia.

Q. Well, when it comes back it comes back to Tug River, does it not?

A. Tug River.

Q. And Item No. 1, Morgantown, is subject to the same explanation as the other Morgantown item, except that it relates to Cabell oil?

A. Yes sir.

Mr. Crawford: I offer in evidence the table just testified to by the witness and ask that it be marked Plaintiffs' Exhibit 43 and copied into the record.

The paper was marked Plaintiffs' Exhibit 43 and reads as follows:

Statement Showing the Amount of Oil Moved or Pumped by the Various Stations of the Eureka Pipe Line Company Named in the I. C. C. Tariffs Which Were in Effect the Year or Twelve Months Beginning With July 1, 1918, and Ending With June 30, 1919.

627

Stations.	Amount pumped.		
Morgantown	7,496.60	barrels	Cabell Oil.
Morgantown	3,638,517.02	"	Penna. Grade Oil.
Cabin Creek	269,170.27	"	" " "
Downs	486,579.40	"	" " "
Brice	29,104.01	"	" " "
Bula	110,615.15	"	" " "
Hoffman	11,504.27	"	" " "
Core	10,461.26	"	" " "
Bucher	923.30	"	" " "
Gibson	1,185.31	"	" " "
Bell	1,041.98	"	" " "
Carson	6,425.03	"	" " "
Murray	7,780.45	"	" " "
Scott	128.62	"	" " "
Jakes Run	2,175.80	"	" " "
Littleton	54,780.21	"	" " "
Total	4,637,888.68		
Butler District, Wayne County	1,459.51	"	Somerset Oil
Grand total	4,639,348.19		

628 Q. From where did you get the figures that are shown upon this Plaintiff's Exhibit 43?

A. Mr. Kenney furnished those figures from the records he has.

Q. You do not know whether they were made up from actual tenders or from the books?

A. He made them up from the original records that he has in his office.

Mr. Crawford: Do you make any objection on the ground that the witness received these figures from Mr. Kenney? We offered them in response to your request for certain information.

Mr. Avis: No, I make no objection on that ground, if the counsel vouches for the figures being correct.

Mr. Crawford: Well, I vouch that they are given in good faith. I cannot vouch for their correctness. I have no doubt that they are correct.

I think I am through with my direct examination of this witness, but I would like an opportunity to confer with my colleagues.

Recess.

629 Afternoon Session.

Q. Mr. Swisher, I show you once more Plaintiff's Exhibit 43 and call your attention again to the second item in the table Morgantown 3,638,517.02 barrels of Pennsylvania grade oil. Can you tell us who were the shippers upon whose tenders that amount of oil or the batches composing it was or were pumped from Morgantown?

A. Not from my records here. I could tell you three shippers that composed that.

Q. What were those three?

A. The South Penn Oil Company; the Carter Oil Company; the Hope Natural Gas Company.

Q. You do not recall any others at this time?

A. I cannot recall any others at this time.

Q. Will you try to ascertain before tomorrow's session who the others were, or some of them, the principal ones?

A. Other than the three you mean?

Q. Yes?

A. Yes, sir, if there were any.

Q. If there were any?

A. Yes, sir.

Q. What proportion of the whole amount was shipped on tenders received from the three shippers whom you have mentioned?

A. Well, the South Penn Oil Company had at least 90 per cent, and the others would be the other ten; that is an estimated figure, of course.

630 Q. You mean the other two to include the whole ten per cent, together with the others that you have not named?

A. The others that I have not named.

Q. Including the two that you have named besides the South Penn Oil Company, they would cover the remaining ten per cent?

A. That would be an estimated figure, yes.

Q. And that is the best of your present recollection?

A. Yes, sir.

Q. Just one more question: Reference was made in the testimony of one of the witnesses yesterday to a delivery of Mid-Continent oil to the Pure Oil Pipe Line Company. Does that oil appear anywhere on Plaintiff's Exhibit 4? If so, will you refer to the item?

A. Yes, sir, it appears under the heading "Oil Produced Outside West Virginia and Delivered to Other Carriers on I. C. C. Tariff for Morgantown, West Virginia," on Prairie I. C. C. 48. The amount is 189,324.94 barrels at three cents per barrel.

Q. And was that oil forwarded on the I. C. C. tariff No. 48 under a tender of shipment?

A. Yes, sir.

Q. And that tender of shipment was for delivery to whom?

A. To the Pure Oil Pipe Line Company at Morgantown.

631 Mr. Crawford: You may cross examine.

By Mr. Avis:

Q. I believe, Mr. Swisher, you stated that you were the general shipping agent of the Eureka Pipe Line Company?
A. Yes, sir.
Q. Do you have any connection officially or by employment with any of the carriers that you have mentioned whose lines connect with those of the Eureka Pipe Line Company?
A. Yes, sir.
Q. Which companies?

Mr. Crawford: I wish to make a general objection to this line to save repetition.
Mr. Avis: Yes.
Mr. Crawford: I object to all questions directed to the witness connected with other companies than the Eureka Pipe Line Company, if such there be, and as to any questions whatsoever in regard to those companies except in the line of connecting carriers, and it is understood that this objection may prevail without repetition to all questions of that sort?
Mr. Avis: Yes.

Mr. Crawford: The ground of my objection being that the
632 evidence is immaterial, irrelevant and incompetent and not pertinent to the issues of this case.

A. I am general shipping agent of the South West Pennsylvania Pipe Lines; the Cumberland Pipe Line Company; and the Southern Pipe Line Company.
Q. What about the Buckeye?
A. I have nothing to do with the Buckeye.
Q. Have you any connections officially or by employment with the Prairie Pipe Line Company?
A. No, sir, I have not.
Q. Who is the President of the Eureka Pipe Line Company?
A. Forrest M. Toll.
Q. Who is the Vice President of that company?
A. W. J. Alexander.
Q. Do you know the names of the members of the board of directors of that company?
A. Some of them.
Q. Please give those whose names you know?
A. Forrest M. Toll; W. J. Alexander; E. W. Macklin. I am not certain of any of the others.
Q. Who is the President of the Cumberland Pipe Line Company?
A. Forrest M. Toll.

Q. Who is the Vice President of that company?
633 A. E. R. Shepard.
Q. Does Mr. Shepard have any connection at this time with the Eureka Pipe Line Company officially?
A. Yes, sir.
Q. What connection?
A. He is Treasurer of the Eureka Pipe Line Company.

Q. And during the filing of these I. C. C. tariffs that you have referred to in your testimony he was also Secretary, was he not?
A. Yes.
Q. Who is the present Secretary of the Eureka Pipe Line Company?
A. I am not sure.
Q. Who is the President of the South West Pennsylvania Pipe Lines?
A. Forrest M. Toll.
Q. Do you know who is the Vice President of that company?
A. I cannot recall for sure.
Q. Do you know who is the Secretary and Treasurer of that company?
A. Mr. Shepard is the Treasurer. I am not sure about the Secretary.

Q. Who is the President of the Southern Pipe Line Com-
634 pany?
A. Forrest M. Toll.
Q. Who is the Vice President of that company?
A. J. W. Vandergrift.
Q. Who is the Secretary and Treasurer respectively of that company if you know?
A. The Treasurer is E. R. Shepard. I am not sure of the Secretary.
Q. I have forgotten who you said was the Vice President of the Southern Pipe Line Company?
A. J. W. Vandergrift.
Q. What if any connection has he with the other companies that I have been asking you about of which you are general shipping agent?
A. He has none.
Q. Do you know whether he is a member of the board of directors of any of the other companies?
A. He is not.
Q. Do you know the names of the members of the board of directors of the Southern Pipe Line Company?
A. I know two members of the board of directors.
Q. Who are they?
A. Forrest M. Toll, J. W. Vandergrift.

Q. Will
635 Q. When you say you know two, do you mean you personally know two of them?
A. I know that those two names are members of the board of directors. I am not sure of the others.
Q. Can you give that information?
A. The members of the board?
Q. Yes, of all the companies of which you are general shipping agent?
A. I cannot recall them for sure, no, sir.
Q. Can you obtain that information and furnish it to me at the next meeting?
A. Sure.
Q. Will you do so?

A. Yes, sir.

Q. And in that request I desire to include not only the names of the members of the boards of directors but all of the officers of these respective companies.

A. Yes, sir.

Q. Do you know who is the President of the Buckeye Pipe Line Company?

A. Yes, sir.

Q. Who is it?

A. Douglas Bushnell.

Q. Who is the Vice President of that company?

636 A. I don't know.

Q. Who is the Secretary and Treasurer respectively of that company?

A. I am not sure.

Q. Can you furnish that information also at the next hearing?

A. I believe that I can.

Q. As well as the names of the members of the board of directors of that company?

A. I think that can be furnished.

Q. When you receive notice of a tender of shipment of oil from the Cumberland Pipe Line Company, by what official of the Cumberland Pipe Line Company would that notice be signed?

A. The President.

Q. And that is true of each of these companies whose names you have mentioned?

A. Yes, sir.

Q. And the notice of tender would be signed by the company, which ever company it was, by its President?

A. Well, I cannot say of any except our own. Our tenders are signed by the President.

Q. Isn't that true of tenders of the Cumberland Pipe Line Company?

637 A. Yes, sir.

Q. And isn't that true of the tenders of the South West Pennsylvania Pipe Lines?

A. Yes, sir.

Q. And isn't that also true of the Southern Pipe Line Company?

A. There are no tenders on the Southern.

Q. In other words, the Southern is merely one of the companies to which your company delivers oil at the West Virginia-Pennsylvania state line, within the State of West Virginia; is that not true?

Mr. Crawford: I object to the last part of the question as not in accordance with the proofs in the case.

Mr. Avis: I am asking him the question, if that is not true.

A. The Southern receives oil at the state line.

Q. You have no physical property beyond the state line of West Virginia, have you?

A. No, sir.

Q. And therefore if you deliver out of your lines into their lines

you must deliver it within the State of West Virginia, is that not true?

Mr. Crawford: I object to that as incompetent.

A. It is delivered to the state line.

638 Q. Has the Eureka Pipe Line Company any pipe lines that extend beyond the state line of West Virginia?

A. No, sir.

Q. Where is your office, Mr. Swisher?

A. Oil City, Pennsylvania.

Q. Where is the office of the Cumberland Pipe Line Company?

A. The general office you mean?

Q. Yes.

A. Oil City, Pennsylvania.

Q. And that is the general office of the Eureka Pipe Line Company?

A. Yes, sir.

Q. And that is also true of the South West Pennsylvania Pipe Lines?

A. Yes, sir.

Q. And also true of the Southern Pipe Line Company?

A. Yes, sir.

Q. Are the offices, the general offices, of these companies all together?

A. They are all in the same building, yes, sir.

Q. Well, you only have one office, haven't you, or suite of offices?

A. Yes, sir.

639 Q. For yourself as the general shipping agent of all these companies?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. And the cost and expenses of operating those companies and paying your salary is apportioned among all these companies, is it not?

A. Yes, sir.

Q. And that is also true of the employes of these various companies that are in your department and under you, is it not?

A. Yes, sir.

Q. Who is the President of the Prairie Pipe Line Company, if you know?

A. I am not sure.

Q. Have you heard who is the President?

Mr. Crawford: I object to what he has heard as incompetent and not the best evidence.

Q. Or have you discovered in any way from correspondence that you have had as general shipping agent, or from notices of tenders or other information that has come into your hands officially in your dealings with that company?

Mr. Crawford: I object to that as incompetent and not the best evidence.

640 A. I cannot recall at present his name.

Q. Can you ascertain that information and let us know by tomorrow?

A. I believe I can.

Q. And the names of its other officers and members of its board of directors?

A. I will try to.

Q. And if you can you will do so, will you not?

A. Yes.

Q. Have those companies that you are general shipping agent of offices at any place else than Oil City, Pennsylvania?

A. Yes, sir.

Q. Whereabouts?

A. Pittsburgh, Lancaster, Pennsylvania; Parkersburg, West Virginia; Winchester, Kentucky; New York City.

Q. Do they all have their offices connected in the same way that you have them in Oil City, Pennsylvania?

A. I think so.

Q. Don't you know so?

A. Well, I should say I know so.

Q. Whereabouts are the offices of these companies in New York City?

A. 18 Broadway.

Q. Have you any offices or have these companies any
641 offices any place in New York City other than at 18 Broadway?

A. No, sir.

Q. You have introduced or there has been introduced in evidence concerning which you have testified a number of tariffs. What is your connection with establishing these tariffs?

A. Only as to the oil passing through our lines on said tariffs.

Q. If there is a joint tariff filed with the Interstate Commerce Commission, of the Cumberland Pipe Line Company in connection with your companies of which you are general shipping agent, to which you have referred, who fixed the rate and the division among these companies of the amount collected under those tariffs?

A. I don't know who fixed the through rate; the amount of the through rate I do not know.

Q. Aren't you as general shipping agent consulted in regard to that?

A. Yes, sir.

Q. With whom do you confer in that respect?

A. Our President.

Q. In other words if the Cumberland Pipe Line Company has to establish and file a tariff in connection with some of the
642 other companies or all of the other companies of which you are general shipping agent and file the same with the Interstate Commerce Commission, you would confer with the President before fixing that rate and filing it or issuing it as a tariff, would you not?

Mr. Crawford: I object to the last part of the question. He said nothing about fixing it or filing it or issuing it. On the contrary, he denied that.

Mr. Avis: I am not speaking of him personally filing it.

Q. By "you" in this question I am not referring to you individually, I am referring to your company.

Mr. Crawford: To which company?

Mr. Avis: Of which he is general shipping agent.

Mr. Crawford: He has testified he is the general shipping agent of both companies.

Mr. Avis: That question related to the Cumberland Pipe Line Company in connection with the other companies.

A. I have nothing to do with the making of the tariffs.

Q. And you have nothing to do with the division of the through rate or its apportionment among the various companies of which you are general shipping agent?

A. Nothing to do with making the rules, no, sir, or regulations.

Q. Do you consult with anybody else about those tariffs
643 except the President, Mr. Forrest M. Toll?

A. That would be all.

Q. And you have consulted with him or he with you in respect to these tariffs, have you not?

A. I have.

Q. Has there been any change whatever made in the rate shown on any of these I. C. C. tariffs since the institution of this suit, that you referred to?

A. I believe not unless it is a gathering rate of the Eureka Pipe Line Company.

Q. That is the only one that you know of that there has been any change made in the rate?

A. I believe so.

Q. Or any change made in the apportionment of the rates?

A. Yes, sir.

Q. Has there been any change made since the institution of this suit in the apportionment of the through rate shown on any of these I. C. C. tariffs among the several companies of which you are the general shipping agent or between any two of them?

A. There has not.

Q. In other words the apportionment is the same?

A. Yes, sir.

644 Q. Has there ever been any controversy or was there any controversy among the several companies of which you are still the shipping agent about the through rate shown on those tariffs or about the apportionment among them or between any two of them?

A. Not that I am aware of.

Q. As far as you know the tariffs are voluntary tariffs and the amount of apportionment is voluntary among the several companies, is it not?

A. As far as I know.

Q. And you have been general shipping agent of this company how many years?

A. Since 1910.

Q. And you have been general shipping agent of all of these companies you referred to since 1910?

A. Yes, sir.

Q. Were you appointed general shipping agent of all of these companies at or about the same time?

A. Yes, sir.

Q. Who employed you?

A. The different companies.

Q. Who notified you of your employment?

A. I cannot recall.

645 Q. It your salary as general shipping agent paid you by separate checks of these companies or does it come to you in one check?

A. It comes to me in cash.

Q. Whereabouts?

A. Oil City.

Q. Who actually hands over the cash to you if you know?

A. Mr. Shepard.

Q. For all of the companies?

A. Yes, sir.

Q. And you do not receive then so much from one company, so much from another company, etc., but you receive one lump for acting as general shipping agent for all those companies, which is paid to you in cash by Mr. Shepard at Oil City, Pennsylvania?

Q. It is proportioned among the different carriers.

Q. Do you know how it is proportioned?

A. Yes, sir.

Q. That is not a matter of your department, though, is it?

A. Yes.

Q. How is that proportioned among these different carriers? On what basis? I don't care for the amount?

646 A. On a proportionate basis as to the amount of work you perform for each of the companies.

Q. Aren't you paid a fixed salary?

A. Yes.

Q. So much per annum or per month?

A. Yes, sir.

Q. How is that then proportioned on the amount of work that you do? Suppose for instance you do not do any work for the Cumberland Pipe Line Company one month, and do all of your work for the Eureka Pipe Line Company during that month, wouldn't you still receive the same salary?

A. You would always do work for all the companies, and the same amount governs unless there is cause for any change.

Q. You don't mean to convey the impression or idea that your salary each month is regulated by the amount of time that you give to any particular company, do you?

A. It is approximated.

Q. But that is in advance, a year in advance, or something like that?

A. Yes.

Q. If you don't happen to do any work for one company one month and do a little for another company and do a great deal for still another *copy* your salary would be the same, would it not?

A. It would.

647 Q. How are the other employes in your office paid?

A. In the same manner.

Q. In cash?

A. Yes, in cash.

Q. Do you own the building in which you have your general offices at Oil City?

A. No, sir.

Q. Is that leased?

A. It is rented.

Q. And by all of the companies together that you have mentioned?

A. Yes, sir.

Q. Does any other company occupy that building besides yourself?

A. Yes, sir.

Q. Which other company?

A. You mean oil companies?

Q. Yes?

A. There are lots of companies in the building.

Q. Does any other pipe line company have an office there?

A. Yes, sir.

Q. Does the Prairie Pipe Line Company have an office

648 there?

A. No, sir.

Q. Does the Buckeye Pipe Line Company have an office there?

A. No, sir.

Q. Does the South Penn Oil Company have an office there?

A. Yes, sir.

Q. Does the Joseph Seep Agency have an office there?

A. That is the one I thought you referred to as the South Penn. Joseph Seep has an office in that building.

Q. Hasn't the South Penn Oil Company an office in that building also separate from the one he has?

A. Not that I know of.

Q. Joseph Seep is the purchasing agent of the South Penn Oil Company, is he not?

A. Yes, sir.

Q. And he was the President of the South Penn Oil Company, was he not?

A. Yes, sir.

Q. And is now the chairman of the board of directors of that company, is he not?

A. I don't know.

Q. Do you know whether Joseph Seep is a director or holds

649 any official connection or position with any of the companies of which you are general shipping agent?

A. He has not.

Q. I believe that you spoke of your several companies having offices at other places besides Oil City, Pennsylvania?

A. Yes, sir.

Q. Has Joseph Seep offices in the same building or with any of your companies at any of these other places besides Oil City?

A. Pittsburgh; I don't know of the others.

Q. What about Parkersburg?

A. I am not sure; I don't know.

Q. How about Charleston, West Virginia?

A. No, I don't know anything about that.

Q. Hasn't the South Penn Oil Company offices in the same place and in the same building with your companies?

A. Which places?

Q. Any of the places you referred to as having offices?

A. They have at Oil City and they have at Pittsburgh. Otherwise I don't know.

Q. Have they any at No. 18 Broadway, New York City?

A. I think not.

Q. What connection has Mr. Dorworth, the counsel for the
650 Eureka Pipe Line Company, with those other companies of which you are general shipping agent?

A. I believe he is the attorney for all the companies.

Q. Isn't he also an official of the South Penn Oil Company?

A. No, sir.

Q. Is he not also an attorney for the South Penn Oil Company?

A. I don't know.

Q. You don't know whether he is appearing in any instance for the South Penn Oil Company?

A. I do not.

Q. Or acting for the South Penn Oil Company as such attorney?

A. I do not.

Q. In your examination in chief you referred to I. C. C. tariff No. 112. I will ask you to turn to original page 6 of that tariff, to what is marked under the head of "Regulations," "Third." Referring to the paragraph that reads:

"All such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in gravity or quality while in transit as may result from the mixture of such crude petroleum with other crude petroleum in the pipe lines
651 or tanks of this or the connecting company or companies. Deliveries will be made to connecting carriers or consignees out of a common stock of crude petroleum of the same general kind or quality as that received from the shipper."

Please explain what that means?

Mr. Crawford: I object on the ground that this witness is not connected with the Buckeye Pipe Line Company and may not be presumed to know what is the meaning of a regulation to be performed by the Buckeye Pipe Line Company.

Mr. Avis: The witness has professed to have knowledge of all of the tariffs referred to in his testimony, and this is one of the tariffs he referred to in his testimony and I therefore insist upon my question.

Mr. Crawford: I beg to differ with counsel in the statement that he professed to have knowledge of a tariff. He has identified these tariffs as the I. C. C. tariffs under which shipments were made. But you are asking him as to the interpretation to be put upon a regulation, or the meaning of a regulation which was made by some other company with which he has no connection whatever and as to which he may not be presumed to have any knowledge.

Mr. Avis: This witness has filed with his testimony a paper marked Exhibit 4 about which he has testified in detail and
652 has explained in detail how all oil moves under this particular tariff as well as others, and says it was made up in the records in his office. The paragraph that I just read to the witness refers to the movement of oil under that tariff and I still insist that the question is proper.

Mr. Crawford: I repeat my objection.

A. I can only say that we receive from a connecting line a certain grade of oil, and when the same is delivered out we deliver that grade of oil. That is all we do with it.

Q. But you make your deliveries out of a common stock of that grade of oil which you have in your pipe lines or tanks, is that not true?

A. Yes, sir.

Q. And do not attempt or make pretence of delivering the same oil that was accepted by you for transportation, do you?

A. Not the same identical oil.

653 Q. Now I notice, in that same regulation about which I questioned you, that provision is made there for a mixture of the oil accepted for transportation with the other oil in your pipe lines or tanks; is that not true?

Mr. Crawford: Same objection.

A. That would be true.

Q. Isn't it true?

A. That is true, I believe.

Q. Well, are you merely expressing a belief? Is it not a fact?

A. It is.

Q. I wish you would look at original page seven of the same tariff, number 212, under the heading "minima," and I ask you if crude oil of any specified kind or grade is not accepted under that tariff in shipments of not less than 1,000 barrels from one consignor consigned to one consignee and destination?

Mr. Crawford: I object to that question as calling for the construction of a written document, which is before the court. The document speaks for itself, and I submit it is not competent to ask this witness what the contents of it are.

The Witness: What is the question, please?

(Pending question read.)

654 A. This is a Buckeye regulation. I do not know.

Q. Well, is that not a Buckeye regulation that is made in connection with your companies or some of them, namely, The Eureka Pipe Line Company, the South West Pennsylvania Pipe Lines and the Southern Pipe Line Company?

A. Yes, I believe it is.

Q. What is the least quantity that The Eureka Pipe Line Company accepts for transportation under its tariffs or any of them?

A. We will accept any amounts.

Q. Any amounts. But you reserve the right to pass it on or to transport it on from Morgantown, West Virginia, until you have aggregated that to the credit of one consignee or to one destination, until the quantity in your tanks at Morgantown shall aggregate a batch of at least 75,000 barrels at that point?

Mr. Crawford: What tariff are you reading from now?

Mr. Avis: You might hear the question, Mr. Crawford.

Mr. Crawford: Well, read the question.

(The pending question was read.)

Mr. Avis: The previous question referred to tariffs of The Eureka Pipe Line Company, about which he says it accepts for transportation in any quantities that are tendered to them.

655 Mr. Crawford: I object to the question if it is intended to give the contents of the tariffs of The Eureka Pipe Line Company, because all of those which are pertinent are already in evidence, and whether they are or not this question is intended to bring out the contents of a written or printed document, and the document speaks for itself and the answer will not be the best evidence.

Mr. Avis: It might sound like that was the intent, but that is not the intent.

Mr. Crawford: We can only judge your intent from what you say, counsellor.

Mr. Avis: I know, but you are not the one that decides upon my intent. That is the judge hereafter. Let us have the answer; you have got your objection.

Mr. Crawford: I object further that if the counsel presses the question as to the contents of a printed tariff, the tariff ought to be shown to the witness. I make this, however, not intending to waive my former objections.

Mr. Avis: No, I did not have any particular tariff on this question; I am just simply getting the general idea.

Mr. Crawford: I know, but the tariffs are all printed, printed documents.

Mr. Avis: I will press the question. You have got one 656 objection, and then we will let the matter go, Mr. Crawford, instead of arguing the question.

The Witness: Will you please read the question?

(Question read: "But you reserve the right to pass it on or to transport it on from Morgantown, West Virginia, until you have aggregated that to the credit of one consignee or to one destination, until the quantity in your tanks at Morgantown shall aggregate a batch of at least 75,000 barrels at that point?")

Q. Is that not true?

A. Yes, sir.

Q. Now, that regulation, about collecting a batch aggregating 75,000 barrels at Morgantown, is a regulation made by the Eureka Pipe Line Company, is it not?

A. Yes, sir.

Q. For its own convenience and for the handling of oil?

A. It is made by the Eureka.

Q. Is the regulation just referred to in the last question and answer one always observed and carried out by your company?

A. Yes, sir.

Q. Your company never starts to move any oil of a particular grade until it has first collected a batch at Morgantown amounting to 75,000 barrels?

A. I believe not.

Q. When you speak of this collecting of a batch, you mean
657 75,000 barrels for the same destination or the same consignee, do you not?

A. For the same destination.

Q. Although there may be several consignees?

A. Yes, sir.

Q. So you do not insist upon any one consignee having 75,000 barrels at Morgantown to his credit, but you do insist upon a batch of 75,000 barrels being aggregated there for one destination before you start its movement from Morgantown?

A. Yes, sir.

Q. I asked you about the Buckeye Pipe Line Company, and I believe you stated that you had no connection with that company?

A. I have no connection with the Buckeye Pipe Line Company.

Q. I will ask you to state whether the Buckeye Pipe Line Company has any eastern outlet, that is beyond the western line of Pennsylvania and the western line of West Virginia, except through the lines or system of the Eureka Pipe Line Company?

A. They also have a connection with the South West Pennsylvania Pipe Lines.

Q. Are those the only two companies with which it has an eastern connection?

A. And the Northern Pipe Line Company.

Q. Have you any connection with the Northern Pipe Line Company?

658 A. No, sir.

Q. The Northern Pipe Line Company runs from what point to what point? You can refresh your recollection from one of the maps if you wish.

A. (Inspecting map.) It runs from the Pennsylvania State Line to Bear Creek, in Pennsylvania, and on.

Q. On to what point?
A. On to Cole Grove, Pennsylvania, and from this point to the New York State line; also they have a line from Kane direct to the New York State line.
Q. That is the Northern Pipe Line Company now you are referring to?
A. Yes, sir. They also have a line to Franklin, Pennsylvania.
Q. Have they any line that extends to the Atlantic Seaboard?
A. No, sir.
Q. Or Seaboard ports?
A. No, sir.

Mr. Crawford: You will save yourself a lot of trouble, counsel, if you look at the map, that is all. They have an eastern connection, the maps show it. It has been testified to already. It simply means I have got to ask a whole lot on redirect, that is all.

Mr. Avis: I am not as familiar with the maps as you gen-
659 tlemen are, and did not pay so much attention to them.

Q. Mr. Swisher, has the South West Pennsylvania Pipe Lines any outlet to the Atlantic seaboard except through the lines of the Eureka Pipe Line Company?
A. Yes, sir.
Q. Does it transport any oil to the Atlantic seaboard except through the lines of the Eureka Pipe Line Company?
A. Via the South West, that is your question?
Q. By the South West?
A. Yes, sir.
Q. But it has to go through the Eureka Pipe Lines before it gets to the South West lines, does it not?

Mr. Crawford: He does not know what you are talking about.

A. I do not understand that question. They also have a connection with the Crescent Pipe Line Company.
Q. Have you any connection with the Crescent Pipe Line Company?

Mr. White: Who do you mean by "you"; the Eureka, do you mean?

Q. Are you general shipping agent of that company?
A. No, sir.
Q. The greater proportion of the oil handled by the South West Pennsylvania Pipe Lines goes through the lines of the Eureka Pipe Line Company and then into the lines of the Southern Pipe Line Company, does it not?
660 A. Yes, sir.
Q. About what percentage of the oil handled by the South West Pennsylvania Pipe Lines goes through the lines of the Eureka?
A. About 75 per cent.
Q. Now, has the Cumberland Pipe Line Company any eastern outlet except through the lines of the Eureka?

A. No, sir.

Q. What is the distance that the Eureka Pipe Line Company transports oil from its connection with the South West Pennsylvania Pipe Lines to its point of connection with the lines of the Southern Pipe Line Company?

A. I think about—will you read that question, please?

Q. (Pending question read.)

A. I think it is twelve or fifteen miles.

Q. That is, the oil is transported from the Pennsylvania-West Virginia boundary line at the point of connection of the lines of the South West Pennsylvania Pipe Lines with those of the Eureka Pipe Line Company, to Morgantown, and then from Morgantown to the point of connection of the lines of the Eureka Pipe Line Company with those of the Southern Pipe Line Company at the West Virginia-Pennsylvania boundary?

A. No, I gave the mileage too small. I should judge——

Mr. Avis: You can correct that after this last question which does not relate to the mileage. You might answer that ques-
661 tion and then correct the mileage, if you will.

(Pending question read:) "That is, the oil is transported from the Pennsylvania-West Virginia boundary line at the point of connection of the lines of the South West Pennsylvania Pipe Lines with those of the Eureka Pipe Line Company to Morgantown, then from Morgantown to the point of connection of the lines of the Eureka Pipe Line Company with those of the Southern Pipe Line Company at the West Virginia-Pennsylvania boundary?"

Q. Could you not answer that question, "Yes," and then correct your distance?

A. Yes.

Q. Now, then, you started to state that you wanted to make a correction in your previous answer.

A. I gave the mileage as twelve or fifteen miles. I believe about twenty-five miles would be nearer correct.

Q. Can you not give us the exact distance?

A. I can; 25.09 miles.

Q. That is the total distance that you transport any Mid-Continent oil received on notices of tender from the Prairie Pipe Line Company, as shown on your Exhibit No. 4, is it not?

A. Yes, sir.

Q. And you transport all Mid-Continent oil received on such notices of tender of shipment the same distance, do you not?

662 A. Via the Southern, yes, sir, when it is for the Southern.

Q. Well, do you transport any Mid-Continent oil for deliveries at the West Virginia-Pennsylvania line except to the Southern Pipe Line Company?

A. No, sir.

Q. Then all Mid-Continent oil that you transport beyond Morgantown is transported a distance of 25.09 miles to the point of connec-

tion of the lines of the Eureka Pipe Line Company with those of the Southern Pipe Line Company, is not that true?

A. Yes, sir.

Q. The only other Mid-Continent oil that your Exhibit 4 shows to have been transported by your company, other than that referred to in a previous question and answer, is that quantity of Mid-Continent oil that you state was delivered on I. C. C. tariff No. 48 to the Pure Oil Pipe Line Company at Morgantown, is it not?

A. Yes, sir.

Q. Is it not a fact that you use the same tanks at Morgantown in which you store what is commonly called the Somerset-Cabell mixture, to store the Mid-Continent oil?

A. I am not familiar with that end of it.

Q. Is it not a further fact that the Mid-Continent oil and the Somerset-Cabell oil is transported from Morgantown to the point of connection of your lines with those of the Southern Pipe

663 Line Company in the same pipes?

A. I am not familiar with that, I do not know.

Q. Is it not a fact that you use the same tanks at Morgantown in which you store your Mid-Continent oil, to store the Corning oil?

A. I do not know.

Q. And is it not a fact that you use the same pipes or pipe lines to transport the Mid-Continent oil which you handle and transport, that you use to transport the Corning oil?

A. I do not know.

Q. You have some tanks have you not, at Morgantown, in which you store Pennsylvania grade oil solely?

A. Yes.

Q. And you have two pipe lines or two pipes, that lead from Morgantown to the Pennsylvania-West Virginia boundary line at the point of connection of those with the line of the Southern Pipe Line Company, which you use solely for the transportation of the Pennsylvania Grade oil, is not that true?

A. Yes, sir.

Q. Then what number of pipes or lines have you leading from Morgantown to the point of connection with the lines of the Southern Pipe Line Company?

A. I do not know.

Q. Does not at least one of the maps that you referred to in your testimony show that there are seven lines?

664 A. (Examining maps.) There are seven lines.

Mr. Crawford: Seven pipes you mean, do you not?

The Witness: Seven lines of pipe, or pipes, on this map.

Q. That is what I mean. And of those seven two are used solely for the transportation of Pennsylvania grade oil, you have stated, have you not?

A. If I did I did not mean it. I did not understand the question. I do not know how that oil is handled.

Q. What is the capacity in barrels, that is storage capacity in

barrels, of the pipe line system of the Eureka Pipe Line Company?

A. About 170,000 barrels, trunk lines.

Q. But you store oils, or keep oils in your other lines, do you not, besides the trunk lines?

A. They are more or less filled with oil.

Q. I wish you would look at I. C. C. tariff No. 151, which was introduced in evidence in connection with your testimony this morning, which tariff is also marked P. S. C. W. Va. No. 6. I will ask you to state if that tariff has not been cancelled and is now not in force or in effect?

Mr. Crawford: Show the witness the tariff, will you not?

(Tariff shown witness.)

A. It is not now in force.

Q. And is not now in effect?

A. It is not now in effect.

665 Q. And it was cancelled as of what date?

A. September 20, 1919.

Q. All of the oil that is covered by that tariff is now held by your company at an increased rate, is it not?

Mr. Crawford: I object to that question as immaterial and irrelevant, not pertinent to the issues in this case.

A. Yes sir.

Q. What is the present rate for gathering and transporting oil from wells to delivery points within the State of West Virginia, per barrel of 42 U. S. gallons?

Mr. Crawford: Same objection.

A. Thirty cents per barrel.

Q. And that rate has been in force and effect, that is the increased rate of 30 cents, since September 20, 1919, has it not?

Mr. Crawford: Same objection.

A. Yes sir.

Q. And you have been collecting thirty cents a barrel for such service since that date?

Mr. Crawford: Same objection.

A. Yes sir.

Q. That is the only tariff that you have referred to in your testimony or identified, as far as you know, that the rate

666 has been increased since the institution of this suit, is it not?

Mr. Crawford: Same objection.

A. Yes sir.

Q. How much additional revenue per month, if you know, does The Eureka Pipe Line Company derive on account of this increase of ten cents a barrel you have just referred to?

Mr. Crawford: Same objection.
The Witness: In a year, do you mean?
Mr. Mathews: A month, the question was.

Q. Per month, was the question. About how much per month, or a year, whichever is easier for you to give?
A. It would amount, in round numbers, to about $600,000 a year.
Q. Well, based on the number of barrels gathered in the State of West Virginia for the year ended June 30, 1919, as shown on your Exhibit number 4, it would mean an added revenue to your company of about $624,640 a year, would it not?

Mr. Crawford: You mean, of course, if the oil production kept up at the same rate?
Mr. Avis: I said, based on his figures.

(The pending question was read.)

667 Mr. Crawford: If the question is not limited by specifying that the production of oil keeps up at the same rate, I object to it as not competent and as misleading.
Mr. Avis: The production of oil in West Virginia might increase, too.
Mr. Crawford: Well, I think that the question should be limited and defined so as to bring in that condition.
Mr. Avis: The question is limited and defined to Exhibit number 4.
Mr. Crawford: Yes, but it is very cleverly phrased so that it does not mean what I propose.
Mr. Avis: Well, I have got my question there, Mr. Crawford, and I am going to stand by it. I have to judge as to the propriety of my question. You have the right to object, but not to lecture me and tell me whether I have asked a proper question. That is all.
Mr. Crawford: I want the court to understand clearly what the defect in the question is.
Mr. Avis: Go ahead, read my question to the witness.

(The pending question was again read.)

A. Yes sir.
Q. Or an average of a little over $50,000 per month?
A. Yes sir.

668 Q. Now, you do not make this gathering charge of thirty cents per barrel, which has been in effect since September 20, 1919, and which is shown on your Exhibit number 4 for the twelve months ending June 30, 1919, at the rate of twenty cents per barrel, except on oil which is gathered and transported by your company between points within the State of West Virginia, do you?

Mr. Crawford: I object to that as immaterial and irrelevant.

A. Just between points in the State of West Virginia.
Q. Yes. In other words that twenty cents is your intrastate rate, is it not?

Mr. Crawford: I object to that as calling for a conclusion of law. The witness is not competent.

A. Yes sir.

Q. As a matter of fact, under I. C. C. tariff number 151, P. S. C. W. Va. number 6, which has been cancelled, you have no right, have you, to collect that twenty or thirty cents per barrel except for the intrastate transportation of crude oil of the gravity and description described in such tariff; have you?

A. If it is destined——

Mr. Crawford: Wait a moment. I object to that as calling for a conclusion of law. This witness is not a lawyer.

669 A. If it is destined to points within the State, the twenty cents is all we collect.

Q. That is, that is all you collected prior to September 20, 1919?

A. Yes sir.

Q. But you collect for such oil so transported now, and since September 20, 1919, thirty cents per barrel of 42 U. S. gallons, do you not?

A. If the oil was run, gathered, on and after September 20, yes sir.

Q. That is what I have said. Then you have not attempted any place in Exhibit 4 to apply your gathering charge of twenty cents, except for oil transported in intra-state commerce, within the State of West Virginia, have you?

Mr. Crawford: I object to that as grossly incompetent, calling for various conclusions of law, and an utterly improper question to put to a lay witness.

Mr. Mathews: It is a question of fact as to whether he attempted to do it.

Mr. Avis: Read the question to the witness.

(The pending question was read.)

A. No, I guess not; no.

Adjourned to Wednesday, December 3, 1919, at 10:15 A. M.

670 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et als.

NEW YORK, December 3, 1919.

Met pursuant to adjournment.

Present: Same as before.

VERNON S. SWISHER resumed the stand.

Cross-examination.

Continued by Mr. Avis:

Q. Mr. Swisher yesterday I asked you what the total storage capacity of the Eureka Pipe Line System was, and my recollection is that you answered 170,000 barrels was the storage capacity of your trunk lines. That is correct, is it not?

A. In that neighborhood, yes, sir.

Q. What is the total storage capacity, including your other lines, in which you hold or keep oil?

A. I cannot say, I do not know.

Q. What is the total storage capacity of the trunk lines and other lines in which you keep oil or hold oil?

A. I do not know.

Q. Can you furnish that information?

A. I do not believe it could be had.

Q. Why do you say it cannot be had?

A. Well, there are so many gathering lines all through the system. It would be an awful job, as I can see. I do not
671 know how it could be gotten at.

Q. Why, don't you know the mileage and the sizes of the pipes which constitute your transportation system in West Virginia?

A. I don't know. I don't know who could furnish it.

Q. You don't know whether anybody in the company could furnish that or not?

A. I don't know who would.

Q. Have you read the bill of the Eureka Pipe Line Company in this suit, in which the total mileage of the system is set forth?

A. I don't believe I have.

Q. Yesterday, on your direct examination you stated that storage charges were made after from 60 to 90 days. I did not catch clearly what you meant by that, from 60 to 90 days. Haven't you any rule, any fixed time?

Mr. Crawford: I object to the question as misstating the witness' testimony. He did not testify that storage charges were made.

Q. Well, we will use the word "imposed" by the company?

Mr. Crawford: No, he did not say that they were imposed by the company.

Q. Well, did you not state that in effect, in substance, that after 60 to 90 days that so-called storage charges were imposed at
672 one-fortieth of a cent per barrel per day?

A. So-called storage charges, I believe I did.

Q. Well, on this tariff 151 they are not called or marked "so-called storage charges", are they; they are called "storage charges", are they not?

Mr. Crawford: Show him the tariff.
Mr. Avis: Refer him to the tariff, 151.

(The tariff was handed to the witness by Mr. White.)

Mr. Crawford: I object to the question as calling for the contents and construction of a printed document, and not the best evidence. The document speaks for itself.

Q. You are looking at the document in question, are you not?
A. Yes, sir.
Q. Now please state what appears from that document, in that respect?

Mr. Crawford: Same objection.

A. It is referred to as "storage, per day".
Q. Yes. Well, do you impose any charge other than for so-called storage charges, that are different or additional to the storage per day shown on that tariff?

Mr. Crawford: I object to that as incompetent.

A. No, sir, I believe not.
Q. Well, then, by what authority do you impose so-called
673 storage charges?
A. It is my business to make the so-called storage charge in accordance with the regulations of the tariff; that is all I can say about it.
Q. Then that is what guides you, is it?
A. This tariff guides me.
Q. Then when you speak of so-called storage charges, you mean the charge that is referred to and stated on that tariff, do you not?
A. Yes, sir.
Q. On yesterday I asked you about the eastern connection of the Cumberland Pipe Line Company. Does the system of the Cumberland Pipe Line Company connect with any other system except with that of the Eureka Pipe Line Company?
A. It does not.
Q. Then all oil that is handled by or through the system of the Cumberland Pipe Line Company passes through the system of the Eureka Pipe Line Company, does it not?
A. Yes, sir.
Q. Now with reference to the storage charges that I have just been asking you about, you said they were imposed after from 60 to 90 days. Haven't you any time in which you impose that charge?
A. Yes, sir.
674 Q. Why does it fluctuate between 60 and 90 days?
A. The rule is on the back of the tariff.
Q. You are familiar with the rules on the tariff, are you?
A. Yes, sir.
Q. Please explain.
A. I will read the rule:
"It will charge storage for the month at the close of each month,

on all oil in production accounts, which was in its custody at the beginning of the preceding month and still remains in such accounts."

Q. What I do not understand, Mr. Swisher, and I wish you would explain that, is how that works from 60 to 90 days? Show me in one instance where you would impose it in 60, and another instance where you would impose it in 90 days?

A. Well, for instance, if the oil was run on the first day of the month——

Q. Will you name some particular month, in illustrating, so we can get it?

A. The first day of December.

Q. All right?

A. There would be 30 days in December.

Q. Yes.

A. Thirty-one days in January.

675 Q. Yes.

A. And it would not quite work out to 90 days, but 28 days in February. If he would sell on the 28th day of February, there would be no storage.

Q. There would be no storage?

A. That is nearly 90 days. There would not be that so-called storage charge.

Q. Then you do not impose the charge until after two months, in the illustration that you have given?

A. Yes, sir.

Q. If it was sold before the 28th of February, would you impose the storage charge?

A. No, sir.

Q. That would be practically three months that you would hold the oil without any imposition of storage charge?

A. In that case, yes, sir.

Q. Well, please mention a case where it would not be so long?

A. If he would run the oil on the 31st day of December, the charge would also take place on February 28th.

Q. Just the same?

A. If he held it that long; yes, sir.

Q. You apply that rule to any one who ships oil through your lines?

A. On the production books.

676 Q. Well, have you imposed it on any other books?

A. There is another rule for charging when the oil is transferred from the production books to the general oil books.

Q. Under what authority do you impose that charge?

A. This tariff, one of the regulations in this tariff I. C. C. 151.

Q. Does the exhibit that was filed with your testimony yesterday, Plaintiff's Exhibit No. 42, show any imposition of that charge that you are now referring to?

A. Yes, sir.

Q. How can we determine or tell from Plaintiff's Exhibit No. 42, filed with your testimony yesterday, which is the storage charge

that you first referred to and which is the storage charge after transfer that you referred to the second time?

A. The first table shows the so-called storage charge on the production books, amounting to $5,779.20, and the second total amounting to $224.79 refers to the other books.

Q. The total of the two represents all that you received from storage of any kind or description, does it?

A. It represents all that was received from storage on the oil produced in West Virginia, yes, sir.

677 Q. Now, do you get a storage on oil not produced in West Virginia?

A. There was a so-called storage charge went into the storage revenue on account of oil received from the Cumberland Pipe Line Company. It is between the pipe lines the charge was made.

Q. For storage in West Virginia?

A. For storage of oil that had been received by the Cumberland Pipe Line Company untendered.

Q. And delivered to your company?

A. And delivered to the Eureka Pipe Line Company.

Q. And held by your company before it was tendered?

A. Going through in the usual stream, of course.

Q. Yes, but you charged for storage of it while it was in West Virginia?

A. We charged, between the lines. An arbitary ruling was made between the companies, and there was a little charge.

Q. Well, it was on the theory that you stored the oil in West Virginia, was it not?

A. It was going through, of course, all the time.

Q. Well, it was in movement all the time, you mean?

A. It was in movement, yes, sir.

Q. But part of the time it was in tanks too, was it not, in West Virginia?

678 A. For the time being it would be in tanks, and then move along.

Q. Yes. It would start at the Tug River Station and be placed in a tank of your company there, or tanks, would it not?

A. Until it could be pumped.

Q. I did not ask you about that, Mr. Swisher?

A. Yes, sir, it would be placed in tanks.

Q. I am just asking categorical questions. It would stay there, and then where was the next tank it would move to?

A. Well, Mr. Kenney is more familiar. I do not know, I am not as familiar with that, but it would be moved on towards the eastern outlet.

Q. But on its route it would stop several times in tanks, would it not?

A. Oh, undoubtedly.

Q. At different stations?

A. Yes.

Q. How much did that charge amount to?

A. It amounted to in the neighborhood of about $5,000.

Q. On how many barrels of oil?
A. It would average in the neighborhood of 150,000 barrels daily.
Q. Daily?
A. Yes, sir.
679 Q. Then you got almost as much from the storage of the Somerset oil during the period that you referred to in your testimony, that is, for the year ending June 30th, 1919, as you did from all the storage charges that you imposed for the storage of oil produced in West Virginia, is not that true?
A. Practically it is.
Q. Now, when you speak of 150,000 barrels per day, you mean it would average that much oil per day during the whole year, would it not?
A. Yes, sir.
Q. You heard Mr. Kenney's testimony at the last hearing, did you not?
A. Yes, sir.
Q. The oil that you are referring to is the Somerset oil, which is intermixed in West Virginia, as he stated and described it, with what is called the Cabell oil, which is produced in Cabell County, West Virginia; is not that true?
A. Yes, sir.
Q. The storage charge that was adjusted between the Cumberland Pipe Line Company and the Eureka Pipe Line Company did not, however, cover the quantity of Cabell oil that was produced in West Virginia, did it?
A. No, sir.
680 Q. It related to the Somerset oil entirely?
A. Yes, sir.
Q. Do you receive a storage charge from any other oil produced in West Virginia than the Somerset oil that you referred to?
A. There is a very small amount that we received storage on from the South West Pennsylvania Pipe Lines on that same account.
Q. That is the Pennsylvania grade oil, is it?
A. Yes, sir.
Q. Solely the Pennsylvania grade oil?
A. Yes, sir.
Q. How much does that amount to?
A. Well, that, I don't think, amounted to more than $10; I don't know.
Q. Ten dollars for what period of time?
A. For the period covered by this record.
Q. What quantity of oil would that cover, average daily, during the year referred to?
A. Oh, I don't believe it would average more than one hundred barrels daily.
Q. One hundred barrels daily. Can you furnish us the quantity of oil that is contaminated by mixture in the movement of columns of oil in the way described by Mr. Kenney at the last hearing,
681 for the year ending June 30, 1919?
A. No, sir, I cannot.

Q. Do you recall that I requested that information at the last hearing?

A. I believe you did.

Q. While you were on the stand and asked that you be prepared to answer at this hearing?

Mr. Crawford: While he was on the stand?

Mr. Avis: I think so.

Mr. Crawford: No, sir, I think not.

Mr. Avis: I think it was added on again, but I asked you by this witness, or to name a witness who could give that quantity. Let us see if I did not.

Mr. Crawford: How can you impose any obligation on a witness who has no personal knowledge, to produce evidence in support of your side of the case? That is a novel proposition to me.

Mr. Avis: Well, when an official of a company is brought here for that company he is supposed to know what he is talking about, and when he states knowledge of certain facts we have a right to find out whether he has knowledge of other facts and can obtain them. We know that the witness can produce records and information
682 here that he did not even take from his office, that are made up by somebody else in connection with his testimony, and we think we have a right to ask the witness about anything in connection with the company, and he can state whether he has knowledge of it or not, or whether it can be acquired or not.

Q. In your direct examination at the last hearing you explained what you meant by the handling of oil at Core, West Virginia, and some other places, I think. The line from Core, West Virginia to the Pennsylvania State Line, where it connects with the lines of the South West Pennsylvania Pipe Lines, is about what distance?

A. I should judge—I don't know whether it is more than a mile or not; in that neighborhood.

Q. Something in that neighborhood. Now you state that that oil goes to what point in Pennsylvania?

A. Mount Morris, Pennsylvania.

Q. About how far is it from Core to Mount Morris?

A. I should judge a couple of miles.

Q. And then it runs from Mount Morris in the lines of the South West Pennsylvania Pipe Lines, to the Pennsylvania West Virginia boundary, and connects again with your lines?

A. Yes, sir.

683 Q. Now that is the only way for oil to travel from Core, West Virginia, back into your main system, is it not?

A. Yes, sir.

Q. Now, what quantity of oil is handled in that way?

A. I presume a couple of hundred barrels a month,—well, I mean, a couple of thousand barrels a month. I am not certain.

Q. Do you charge the gathering charge on the oil, for collecting it at Core?

A. Yes, sir.

Q. That is the charge that during the year ended June 30th, 1919, was 20 cents per barrel?

A. Yes, sir.

Q. Now, does that go forward from Core to Mount Morris and back into West Virginia on an I. C. C. tariff?

A. Yes, sir.

Q. From what point is it consigned?

A. From Core.

Q. How far do you transport that oil, or what distance would your gathering charge cover on that oil?

A. Any oil produced in West Virginia; the gathering charge is collected on it.

Q. I understand. Well, what distance——

684 A. (Interposing.) No matter what distance it has traveled, that is the gathering charge.

Q. I understand that, but I am not asking you that question. I am asking you about the average distance that you gather and collect that oil at Core, West Virginia, that you refer to as going out of the State and back into the State?

A. You mean from the producers' wells at Core?

Q. Yes, from the producers' wells at Core.

A. I cannot answer that question.

Q. You cannot answer that. Well, that is all you do at Core, is it not, to gather and collect it from the producers' wells?

A. I believe so.

Q. For that charge of 20 cents. Now then, you consign that oil—Do you hold it at Core until it aggregates 75,000 barrels?

A. No, sir, it moves all the time.

Q. Whether consigned or not?

A. No, sir, there is always a tender of shipment for that.

Q. In advance?

A. Yes, sir.

Q. Of its production?

685 A. Always, mostly in advance.

Q. Well, suppose that there is not a tender of shipment of oil there, you continue to move it any way, do you not?

A. If there would be—Yes, sir.

Q. Yes. Now, did you move all of the oil from Core, West Virginia to Mount Morris on I. C. C. tariffs?

A. Yes, sir.

Q. How could you move it on an I. C. C. tariff when some of it was not tendered or consigned?

A. There would be a tender forthcoming.

Q. Then you would move it in advance of a tender, would you?

A. In some cases.

Q. There is no way for you to tell here, is there, from any of the exhibits you have produced, how much moved from Core after a tender, and how much moved before tender; is there?

A. In the case of Core, I believe there were tenders all the time in force during that period.

Q. In advance of your movement of the oil to Mount Morris?

A. Yes, sir.

686 Q. Are you positive of that? You stated both ways, Mr. Swisher; you stated that you believed that some of it was moved before it was tendered, and now you say you believe it was all moved after it was tendered.

Mr. Crawford: I object to that, as misstating the witness' testimony.

Q. In substance or in effect?

Mr. Crawford: It was the counsel who stated, or offered the hypothesis, that it might not have been tendered in advance, and what would happen in that case.

Mr. Avis: Well, now, let us see if it is all the counsel.

(The record was read, from line 11 on page 609 to and including line three on page 611.)

Mr. Crawford: There is no conflict there, because the answer of the witness in some cases does not refer to the twelve months at all.

Mr. Avis: I stand on my question. My construction of his language is different from yours, Mr. Crawford. Repeat the question to the witness.

Mr. Crawford: All right, I will submit it to the Court.

Mr. Avis: The whole period is referring to the year ending June 30th, 1919.

Q. (Question read: "Are you positive of that? You stated both ways, Mr. Swisher; you stated that you believed that some of
687 it was moved before it was tendered, and now you say you believe it was all moved after it was tendered.")

A. I am not quite positive.

Q. You are not quite positive whether some was moved before it was tendered or whether it was all moved after it was tendered; that is what you mean, is it not?

A. Yes, sir.

Q. When you send that forward on an I. C. C. tariff, what tariff number do you send it forward on?

A. 154, I think is the tariff.

Q. Under the tariff you have just referred to did the Eureka Pipe Line Company receive, in addition to the gathering charge, its proportion of the joint rate?

A. Yes, sir.

Q. That would be its proportion from Core?

A. From Core.

Q. To the point of destination?

A. Yes, sir.

Q. Is that all that you received from the handling of that oil, 20 cents per barrel for gathering it during the year referred to, and your proportion of the through rate to point of destination from Core?

A. Yes, sir.

Q. There was no other charge made at Morgantown?

688 A. No, sir.

Q. The oil that you referred to, of course, was mixed with your West Virginia oil, was it not, of that same grade?

A. Yes, sir.

Q. Both before it reached Morgantown and after it reached Morgantown, and on its way out to the West Virginia Pennsylvania boundary, was it not?

A. Yes, sir.

Q. And you did not pretend to deliver the identical oil that came from Core, but some oil of that same grade; is not that true?

A. That is true.

Q. I note that this same tariff, No. 154, provides for a rate from Beulah, West Virginia. Does some oil move from Beulah, West Virginia into Pennsylvania and back into the State of West Virginia, in the same way that it does from Core, West Virginia?

A. Yes, sir, but there was no oil moved from Beulah during that period on that tariff.

Q. Was there any oil moved from Beulah into Pennsylvania and back into West Virginia, into your lines?

A. Yes, sir, and continued and went north.

Q. I said, that came back into your lines?

A. Well, it came back for a little piece, and then went north again.

689 Q. Well, now, how would that come back. Explain that route from Beulah?

A. The Beulah oil goes to Minor, Pennsylvania. From Pennsylvania it comes back in through a short distance of the Eureka Pennsylvania Line again before it finally goes back to the Southwest.

Q. Well, you make a gathering charge on that oil?

A. Yes, sir.

Q. You say none moved on this tariff. On what tariff did it move?

A. Beulah oil could be applied on——

Q. I am not asking what it could be applied on; I am asking about the oil that you are describing as having gone into Pennsylvania and back; on what tariff did it move?

A. It could move on any other tariff filed there. Beulah is also named in other tariffs.

Q. Well, I would like to know on what tariff the particular oil you are last referring to moved from Beulah (handing witness tariffs)?

A. It would move on Eureka I. C. C. No. 144, that is for Pittsburgh; or——

Q. No, I am referring to the oil that you just referred to, that went into Pennsylvania and came back into your lines in
690 West Virginia from Beulah?

A. Yes, sir.

Q. That is what I am referring to.

A. Well, it could move on several tariffs. I do not know on what tariffs that Beulah oil was applied during that period.

Q. I am referring to the oil that moves from Beulah and Minor

and then back into your pipe line system in West Virginia; what tariff does that move on?

A. That would move on either tariff 144, 145 or 146.

Q. Depending entirely upon its destination, is that what you mean?

A. The destinations on those tariffs and tenders that were issued.

Q. What is the distance from Beulah to Minor, about?

A. I should judge a couple of miles.

Q. And of that distance a part of the pipe lines or system belongs to the Eureka Pipe Line Company, and the balance to the South West Pennsylvania Pipe Lines?

A. Over in Pennsylvania they belong to the South West Pennsylvania Pipe Lines.

Q. What distance does the oil move in West Virginia through your lines, on its way to Minor?

A. It looks to be about half a mile, I should judge (exam-
691 ining map).

Q. Do you get a gathering charge? You make a charge for gathering that oil, do you not, at Beulah?

A. Yes, sir.

Q. And then you also get your proportion of the through rate when it travels on an I. C. C. tariff?

A. Yes, sir.

Q. Now, do you not always, or sometimes, move oil from Beulah before it is consigned to Minor?

A. There have been cases.

Q. During the period that we are referring to?

A. I am not sure of that.

Q. In other words, you move the oil whether you have got a consignment for it or not, do you not, in some instances?

A. In some instances.

Q. Yes, and you cannot tell us how much you move in that way?

A. No, sir.

Q. Before it is consigned?

A. No, sir.

Q. But you move it and charge for both collecting it, and the I. C. C. rate stated in the tariff from Beulah, which you have just referred to, whether it has been previously consigned or not,
692 do you not?

A. Yes, sir. There is always a tender forthcoming.

Q. In other words, you expect a tender some time following?

A. Yes, sir.

Q. And that comes back into West Virginia, and goes to Morgantown, does it not, that oil?

A. No, sir.

Q. Well, we are referring entirely to the oil that goes from Beulah to Minor and back into West Virginia.

Mr. White: Captain, you are confused. The Core oil goes to Morgantown; the Beulah oil does not go through Morgantown.

Mr. Avis: He says it comes back into the West Virginia line.

Mr. White: (Indicating on map.) That is true.

Q. Then as I understand you, you move oil from Beulah to Minor through the line that you have just referred to, and then it comes back into the State of West Virginia?

A. Just for a short period.

Q. A short period?

A. A short distance.

Q. A short distance; about how far?

A. It looks like half a mile; I am not certain.

693 Q. Then it moves forward through your lines again about the same distance, does it not?

A. Yes, sir.

Q. To connect with the lines of the South West Pennsylvania Pipe Lines?

A. Yes, sir.

Q. Now after that oil gets into the South West Pennsylvania Pipe Lines, does it not also, or some portion of it, come back into West Virginia again and land at Morgantown?

A. No, sir.

Q. None of that?

A. No, sir.

Q. At what other places do you get more than one rate on handling that oil, more than the gathering charge and your proportion of the I. C. C. charge for handling the oil from Beulah?

A. All the points named in this list (Plaintiff's Exhibit 43).

Q. No, I am talking about this particular oil that moves from Beulah, from Beulah to Minor, back into your lines, and then about a distance of half a mile back into the lines of the South West Pennsylvania Pipe Lines, and goes on north in those lines, which you say does not run to Morgantown. Do you get more than the

694 gathering charge and your proportion of the I. C. C. rate?

A. That is all.

Q. On its original consignment from Beulah?

A. That is all we receive.

Q. What other places besides Beulah and Core do you handle oil from, that goes out of the State and back into the State in the way you have described?

A. There is some oil at Bucher.

Q. Just one minute, before we start on that. How much oil do you handle from Beulah, in the way you have just described? What is the average quantity per month?

A. About 110,000 barrels during the year.

Q. You are referring to the same period, ending June 30th, 1919?

A. Yes, sir.

Q. Now then, you can describe what other oil moves out of the State of West Virginia into Pennsylvania and back?

A. There is oil from Bucher.

Q. To what points?

A. Georgetown, Pennsylvania.

Q. How far is that handled, what distance is that handled through your lines?

A. Not more than half a mile at that point, I don't think.

695 Q. That goes to Georgetown, Pennsylvania, and back in the lines of the South West Pennsylvania Pipe Lines?

A. It goes to the Southwest.

Q. The South West Pennsylvania Pipe Lines; about what distance through its lines before it goes back into the Eureka's lines again?

A. I think about ten miles.

Q. And then where does that oil go to?

A. It goes to Brice, West Virginia.

Q. What distance?

A. I presume about 20 miles.

Q. And then where does it go?

A. It goes to the South West Pennsylvania Pipe Lines again.

Q. And then where does it go to?

A. It goes to Nedskey.

Q. Pennsylvania?

A. Yes, sir.

Q. And then where does it go to?

A. It is applied on tenders, I think, for Olean.

Q. None of that comes back into West Virginia, after it goes to Nedskey?

A. It does not.

Q. About what quantity of oil was handled in that way?

696 A. There were 900 barrels during that period, 923 barrels.

Q. You got the gathering charge on that, as well as your proportion of the I. C. C. did you not?

A. Yes, sir.

Q. To go out of the State in the way you describe and come back into the State, and then get into the lines of the South West Pennsylvania Pipe Lines is the only way you could transport that oil, is it not?

A. Yes, sir.

Q. And that is also true of the oil at Beulah, and the oil from Core, is it not?

A. Yes, sir.

Q. In other words, it had to go out of the State, and through the lines of the South West Pennsylvania Pipe Lines a short distance, and then back into your lines, to go to its final destination, did it not?

A. Yes, sir.

Q. That is true of all those places?

A. Yes, sir.

Q. Now, at what other places besides the three that you have mentioned, have you handled oil in that way?

A. There is Scott, Murray, Carson, Bell and Gibson; five points.

697 Q. Before we get into this, on this oil that moves from Bucher to Georgetown and back, on what tariffs does that move?

A. That would move on Eureka, 145 or 146.

Q. The quantity of oil you handled on those tariff numbers would be shown, and is shown, on your Plaintiff's Exhibit No. 4, is it not?

A. It is included in those amounts.

Q. That is true also of the oil from Beulah and Core, is it not, that you have previously referred to?

A. Yes, sir.

Q. You started to name five other points at which oil was handled in that way?

A. Scott, Murray, Carson, Bell and Gibson; five points.

Q. What would be the course of that oil?

A. That would be, it would just go across the State Line to the South West Pennsylvania Pipe Lines.

Q. Well, about what distance?

A. Say half a mile.

Q. And then how far would it be transported through the pipe lines of the South West Pennsylvania Pipe Lines?

A. About six miles I think.

Q. About six miles. And then back into your system?

A. Yes, sir.

698 Q. About what distance?

A. About ten miles.

Q. And then it would connect with the South West Pennsylvania Pipe Lines again?

A. Yes, sir.

Q. Now, are those all of the places from which oil is handled in that way?

A. Yes, sir.

Q. You, of course, get your gathering charge on the oil that moves from these last five named places, and also your proportion of the I. C. C. charge, do you not?

A. Yes, sir.

Q. And that oil on the I. C. C. charge would be consigned from those five points respectively, would it not?

A. From those points.

Q. What tariffs relate to the movement of oil from those five points?

A. They would move on tariffs either I. C. C. 145 or I. C. C. 146.

Q. And your Exhibit 4 shows the quantity of oil that moved on those respective tariffs, does it not?

A. Exhibit 4 includes the oil moving, yes, sir.

Mr. Crawford: Pardon me a moment. Will you not have him identify those two tariffs by exhibit number? Those are the tariffs (Indicating).

699 Mr. Avis: Yes, I will be very glad if he will.

Q. Are these the two tariffs you refer to, Plaintiff's Exhibit No. 27, and Plaintiff's Exhibit No. 28, respectively I. C. C. No. 145 and No. 146?

A. Yes, sir.

Q. In your testimony in chief, at pages 334 and 335 of the depo-

sitions in this case, you referred to I. C. C. tariff No .134 and I. C. C. tariff No. 142. I wish you would look at that; it might refresh your recollection and help you to answer the question. Did you not state that there was certain oil produced at Beulah and Core which was handled in the way you have just described, which came back to Morgantown for Bayonne and Bay Way, New Jersey, aggregating something like 5,000 barrels?

A. If I did I did not intend to. Beulah should not have been included. It was just oil from Core.

Q. Well, the question was propounded to you by counsel for the plaintiff, and the question purported to give the quantities from each place, and stated "one for 2,496.92 and one for 2,496.95 barrels respectively," and you answered "Yes, sir."

A. (Examining record.) That oil all came from Core.

Q. Well, please explain that?

A. Beulah and Core are both mentioned on the tariff,
700 but during that period there was no oil applied on that from Beulah; it all came from Core.

Q. Why would it have been represented by two items there, of the quantity of oil, as embraced in the question to which you answered "Yes, sir"?

A. Those are tenders of shipments.

Q. Then you do receive tenders of shipment before your oil aggregates 75,000 barrels in your tanks, do you?

A. This was from Core?

Q. Yes?

A. We receive tenders of shipment for any amount of oil.

Mr. Crawford: At Core, you mean?

The Witness: Oh, no, because at Core there is only a small amount of oil produced. We only receive—the usual size of the tenders from Core are about 2,500 barrels.

Q. I asked you to explain why you have represented the movement of barrels by two items, one for 2,496.92 and one for 2,496.95 barrels; do you mean by that that they moved forward on two tariffs or on the same tariff?

A. On the same tariff, but there had been during that period a slight change in the rate.

Q. Well, is not the real explanation that some of that oil went to Bayonne, and the balance went to Bay Way, New Jersey?

701 A. I cannot recall. The reason I put that in there, as you will notice, is the difference in rates.

Q. I do not notice it from the paper?

A. On this exhibit, one of those tenders moved at the rate .0462, and one at .0458; just a very slight difference.

Q. Was that quantity of oil delivered at one destination or two destinations?

A. At Bayonne is the destination for all of it.

Q. Is the rate different to Bayonne from that to Bay Way?

A. No, sir.

Q. The rate is the same?

A. Yes, sir.

Q. Now the oil that moved in that way on I. C. C. No. 134 moved on tenders as low as 2,500 barrels?

A. Yes, sir.

Q. Then you do make exceptions to the regulations printed on the I. C. C. tariffs, as to the quantity of oil you will move, and in some instances move it in less quantities on tenders than 75,000 barrels; is it not a fact?

A. The regulation applies to oil moving through Morgantown.

Q. Well, does not this oil go into Morgantown, that comes from these places?

A. Yes, sir.

702 Q. Do you not hold it there and——

Mr. White: What do you mean by "these places"? Do you mean Beulah?

Mr. Avis: The places we are referring to, Beulah and Core; through Morgantown and go into the tanks there?

The Witness: That oil is moving all the time, of course.

Q. Well, but it is placed in tanks at Morgantown, is it not?

A. And is moved out almost immediately, on tenders, going through constantly.

Q. I understand, but you do not move it from Morgantown until it, with the quantity that is in the tanks or may be placed in the tanks, aggregate about 75,000 barrels, is not that true?

A. 75,000 barrels is the minimum movement.

Q. All right. Do you not receive tenders of shipment for less quantities than 2,500 barrels from Beulah and Core?

A. I think that is the smallest amount we receive; possibly 2,000, I am not certain.

Q. When you spoke of 2,496.92 and 2,496.95 barrels, do you mean that that is all the oil that you handled during the year from Core on tariff No. 134?

A. I believe so.

703 Q. Well then, did you hold it there for the full year before you moved it?

A. We did not hold the oil at all. The tender would not be applied out until we had that amount on it as a credit.

Q. You have stated the quantity of oil that was produced at those places and the amount that you received for transportation, and it shows there nearly 5,000 barrels for the full period of a year. Must you not have moved some of the oil that is embraced in those items before it aggregated 2,500 barrels?

A. In a credit?

Q. I do not know about a credit; I am asking you if you did not move some of it?

A. We would not apply the oil out until the tender was completed, until we had the full amount of the tender completed.

Q. You would not apply it out, from what place?

A. Morgantown.

Q. From Morgantown. Well, I am speaking about from Beulah and Core?

A. The oil would move just as it is produced, from Beulah and Core.

Q. In less quantities than 2,500 barrels, would it not?

704 A. Oh, yes.

Q. That is what I am trying to drive at. Then it would go to Morgantown and would be placed in tanks there, until when added to the quantity that was in the tanks, or if this got there first additional oil was added to that until it aggregated about 75,000 barrels, before you started to move it again east?

A. Of course you are not speaking of the identical oil. The oil is moving all the time.

Mr. Avis: No, I am not speaking of the identical oil.

Mr. Crawford: One moment. I object to the form of the question, because it implies that there was oil from Beulah that went to Morgantown, and the testimony is that there was no such oil during the period in question.

Q. Well, that was your statement, that there was no oil from Beulah via Morgantown to Bayonne, New Jersey. Is that true?

A. Yes, sir.

Q. Then all of the oil that we have been discussing, that is, the two items aggregating nearly 5,000 barrels, moved from Core?

A. Yes, sir.

Q. That is right. And you accepted it in less quantities

705 than 2,500 barrels, did you not?

A. From Core?

Q. Yes.

A. Yes, sir.

Q. And moved it on to Morgantown in these small quantities?

A. Yes, sir.

Q. And put it in tanks?

A. Yes, sir.

Q. And if the tanks were empty you held that oil at Morgantown until other oil was added to it in sufficient quantity to total about 75,000 barrels, before you moved it east again, is not that true?

A. The oil was not held at all. The amount on the tender would appear as a credit balance, and when that tender was completed that was applied out with the other tenders going through.

Q. Well, all the oil that you moved from Core in the way you have described through Morgantown, is represented by those two items, is it not?

A. No, sir. The second item is also from Core on tariff I. C. C. 154, pretty nearly 5,000 barrels.

Q. That goes forward there?

A. Yes, sir.

706 Q. Well, any oil or all the oil that you moved from Core to Morgantown, West Virginia, is placed in tanks at Morgantown, is it not?

A. Yes, sir, for the time being.

Q. Yes; and that particular oil is not moved separate from any other oil, is it?

A. No, sir.
Q. And it is placed in tanks with other oil, is it not?
A. Yes, sir.
Q. And if the oil from Core goes to Morgantown first, you would add other oil to it in your tanks, mix it with it until you got a total quantity of 75,000 barrels, before you would start its movement east from Morgantown; is not that true?
A. For this same point of destination, yes, sir.
Q. Yes. Now on page 335 of your testimony, at the top of the page,—the beginning of the question, started at the bottom of page 334—you were asked this question:

"Q. I show you one more tariff, entitled I. C. C. No. 142, the Eureka Pipe Line Company in conjunction with the Southern Pipe Line Company, and other carriers, from Morgantown, West Virginia, to Center Bridge, Pennsylvania, and ask you whether that is
707 the tariff under which this item of 4,279.63 barrels in this table was moved?"

To which you answered, "Yes, sir."

Mr. Crawford: That is I. C. C. No. 142, Exhibit 31.

Q. (Continuing:) Now will you look at Plaintiff's Exhibit No. 4, and point out on there where the oil referred to in that question to which you answered "Yes, sir" appears?
A. In my testimony yesterday I explained that that item did not belong there, and explained why.
Q. I was just leading up to that very question. I did not understand your explanation on yesterday about that Center Bridge oil in connection with your previous testimony, and I think you gave some previous testimony in respect to that oil that I canot now turn to in the evidence; but I would like you to explain again how that oil is handled by your company, whether it comes back into the State of West Virginia again or not?

Mr. Crawford: Are you asking him about a general custom, or are you asking him about this particular quantity?
Mr. Avis: About this particular item.
Mr. Crawford: Then you mean how it was handled, don't you?
Mr. Avis: Yes, sir.
708 Mr. Crawford: You said, how it is handled.
Mr. Avis: Well, I ought to have said in the past tense.

The Witness: You wish me to explain again, do you?

Q. Yes, sir, please. I did not just understand your explanation yesterday?
A. Some time previous to the period covered by this report, Exhibit 4, this oil moved on Eureka tariff 135 for Bayonne, New Jersey, with the stopover privilege of three years, for stopover at Center Bridge, Pennsylvania. The end of the three year period arrived and it was found that this amount of that tender did not reach Bayonne, but was held at Center Bridge; and the Eureka Pipe Line

Company was paid the small additional rate for the reason that the through rate from Morgantown to Center Bridge would be more than from Morgantown to Bayonne, and their rate would be more. That was the difference.

Q. Well, now, was it understood in advance that there was to be a stopover at Center Bridge, Pennsylvania?

A. Yes, sir.

Q. Do you handle any oil that is delivered to you by any other carrier in the State of West Virginia, that has a stopover privilege in the State of West Virginia?

A. No, sir.

709 Q. In other words, during the period mentioned, you received no oil from any other company connecting with your lines, that had a stopover privilege in West Virginia?

A. We did not.

710 Q. I am not sure that my questions and your answers fully cover the storage charges for any other oil that was delivered to you except by the Cumberland Pipe Line Company and the South West Pennsylvania Pipe Lines; and I now desire to ask you whether you received by adjustment or otherwise any profit or storage charge or so-called storage charge of a similar nature for storing oil delivered to your company, The Eureka, by the Buckeye Pipe Line Company?

A. We did not.

Q. Or any oil that originated with the Prairie Pipe Line Company?

A. We did not.

Q. Then you did not receive any storage charges whatever on Corning oil in West Virginia?

A. We did not.

Q. Nor on Mid-Continent oil in West Virginia?

A. We did not.

Q. Will you turn to Plaintiff's Exhibit number 4. You give there at the foot of sheet 2 as the total gross revenue from transportation for twelve months ending June 30, 1919, $2,669,692.43. Does that truly show the gross revenue from transportation for the twelve months ending June 30, 1919?

A. It does.

711 Q. Then the amount that you received from the Southern Pipe Line Company is not carried to transportation accounts, is it?

A. It is not included in those figures.

Q. And is not carried to transportation account on your books?

A. It is not.

Q. But it is carried to storage account, is it not?

A. It is put in the so-called storage account.

Q. Do you receive or does your company receive any revenue other than that shown in Plaintiff's Exhibit number 4 and the storage charges that you referred to?

A. I am sure they do.

Q. From what other sources?

A. I am not familiar with that part of it.

Q. You are sure they do? What do you mean by that, that you are sure?

A. Well, they have a little rental I believe from a few houses, but I am not sure. I cannot state. I am not familiar with that end of the business.

Q. I am referring more directly to revenue received from transportation for storage or from the handling of oil?

A. This is the entire amount received from the revenue from transportation, and the amounts given for storage are the entire amounts given for storage, so-called storage.

712 Q. You mean received for storage?

A. Yes.

Q. And that represents all the gross revenue received by The Eureka Pipe Line Company during the year ending June 30, 1919, from the handling and transportation of oil?

A. Yes sir.

Q. Do your books carry an account as "storage" or "so-called storage?"

A. So-called storage revenue?

Q. Yes; I ask if your books carry an account as "storage" or as "so-called storage,"

A. For the so-called storage we carry an account called "storage and demurrage revenue."

Q. And that refers to all of this so-called storage about which you are testifying?

A. Yes sir.

Mr. Crawford: By courtesy of counsel I am allowed to interrupt the cross-examination.

Mr. Avis: Certainly.

Mr. Crawford: And call attention to the fact that there appears to be an error in addition in the last column on the first sheet of Plaintiffs' Exhibit 4, whereby the amount appears to be eleven dollars too much. The error appears to start with the item at the top of the page of 101,355.82, which in an earlier part seems

713 to have been 101,366.82. At any rate, will you in the revised exhibit which I asked you yesterday to prepare for the purpose of making other corrections, see that the total is corrected?

The Witness: Yes.

Mr. Crawford: We will have it gone over. If there is a correction in it, we will have it made.

The Witness: The footings seem to be correct on this exhibit.

Q. In your direct testimony you explained how, when you received oil from the original producer, oil was handled by your company. Do I understand from what you stated in that respect that if I were a producer in Kanawha County, West Virginia, and should deliver to you unconsigned 500 barrels of oil, that you would start that oil to move forward without any order from me?

A. It would move right in the regular stream along with the other oil.

Q. And it might possibly go out of the state before I consigned it, might it not?

A. Yes sir.

Q. And it would probably do so?

A. It would probably do so, that particular oil.

714 Q. In other words, if I should deliver to you 500 barrels of oil in Kanawha County, West Virginia, before I consigned it that particular oil might have gone out of the state, might it not?

A. Yes sir.

Q. And if afterwards I consigned it to the Elk Refining Company in Kanawha County, West Virginia,—consigned that quantity of oil to the Elk Refining Company in Kanawha County, West Virginia, you would possibly deliver to the Elk Refining Company the identical oil that had been consigned to a point out of the state, might you not?

A. We might very possibly.

Q. In other words as to the identical oil, you don't know where it finally goes, do you?

A. Not the identical oil.

Q. I will ask you now to turn to Plaintiff's Exhibit number 24 on which is shown that the total gross revenue from transportation for twelve months ending June 30, 1919 was $2,669,692.43, and I will ask to state whether of that amount $1,249,281.80 was received under I. C. C. tariff number 151, P. S. C., W. Va. No. 6, Plaintiffs' Exhibit 35, to which you have previously referred?

A. Yes sir.

Q. And the $1,249,281.80 is approximately 47% of the 715 total gross revenue received from transportation for the twelve months ending June 30, 1919, is it not?

A. Yes sir.

Q. You stated yesterday that that tariff had been cancelled and that you had been allowed to charge since September 20, 1919, thirty cents a barrel for gathering oil instead of twenty cents a barrel. That is correct is it not?

A. Yes sir.

Q. And that was done by an order of the Public Service Commission of West Virginia, was it not?

A. I believe so, yes sir.

Q. Assuming that the same quantity of oil had been gathered for the twelve months ending June 30, 1919, under the gathering charge of thirty cents a barrel, it would have produced $624,640.90 additional, would it not?

A. Yes sir.

Q. Which added to the $1,249,281.80 would have made a total of $1,873,922.70, would it not?

A. Yes sir.

Q. Did you not receive from all the oil handled by you under I. C. C. tariff during the period we are referring to $1,419,489.74 of the total gross revenue from transportation amounting to $2,669,692.43?

A. I don't make it that amount.

716 Q. State then of the total gross revenue shown on sheet 2 of Plaintiff's Exhibit 4, how much thereof was received from deliveries to other carriers on I. C. C. tariffs other than tariff No. 151?

A. I make the amount $1,420,410.62.

Q. In that do you add the $29.53 for Centerbridge Pennsylvania oil?

A. Yes, I added that in my total.

Q. Ought not that be deducted under the explanation you have given about the handling of that oil?

A. We got the money for it during that period. And why should it be deducted?

Q. You stated that you did not get it from transportation, that you got it from a stop-over privilege.

A. Not from the actual transportation of oil during that period, but the money was turned over to us.

Q. And in arriving at that total of $1,420,410.63 you have included the item appearing on sheet 2 of Plaintiffs' Exhibit number 4, the item of $29.53 as Centerbridge Pennsylvania oil, and also the item of $892.36 described as Eureka Pipe Line proportion of the one per cent deduction on Eureka tenders, have you not?

A. Yes sir.

717 Q. If you deduct those two items the total would be $1,419,488.74, would it not?

A. Yes sir.

Q. Assuming that you had received thirty cents a barrel for oil gathered in West Virginia during the same period instead of twenty cents a barrel for the gathering charge of such oil, your total from that source, referring to that collected under I. C. C. tariff No. 151, P. S. C. W. Va. No. 6, would have amounted to $1,873,922.70, would it not?

A. Yes sir.

Q. On the same assumption your total gross revenue from transportation for the period referred to would have — $3,294,333.33, in round figures, would it not?

A. Yes sir.

Q. Of which amount on the same hypothesis $1,873,922.70 would have been collected under I. C. C. tariff No. 151, P. S. C. W. Va. No. 6, would it not?

A. Yes sir.

Q. When you speak of I. C. C. tariff No. 151 P. S. C. W. Va. No. 6 being cancelled, it was replaced by I. C. C. tariff No. 160, P. S. C. W. Va. No. 8 marked Plaintiff's Exhibit 33, was it not?

A. Yes sir.

Q. In speaking of your gross revenue from transportation for the period referred to, didn't you receive some profits, either in
718 money or oil under the regulation on the back of I. C. C. tariff No. 151, P. S. C. W. Va. No. 6, which provides as follows:

"It will deduct for evaporation and waste two (2%) per cent of the amount of oil run?"

A. Yes sir.

Q. The same regulation appears on the back of I. C. C. tariff No. 160 P. S. C. W. Va. No. 8, does it not?

A. Yes sir.

Q. Does your profit under that regulation appear any place under Plaintiff's Exhibit 4 or any of the exhibits filed by the plaintiff in this case?

A No sir, that deduction is made of oil.

Q. What was your profit in oil, what was the quantity of oil that your company earned during that period?

A. We did not earn anything. That was all lost during the period. It always is. That is to make up for the evaporation and waste in the handling.

Q. Isn't there any variation under that regulation? Does it always show a loss?

A. Usually, yes.

Q. Is there any record or account kept of evaporation or waste?

A. Not of that particular two per cent that is deducted. We keep an account of the one per cent,—how much oil we get from
719 all the runs during the year.

Q. Don't your records show that during some years you gain some oil?

A. No sir. Very, very seldom. I don't know when.

Q. I note that on sheet 2 of Plaintiff's Exhibit 4, you seem to have kept an account of the proportion of the one per cent deduction on Eureka tenders, that appears on I. C. C. tariffs.

A. That is to arrive at the twenty cents, on that portion of the tenders.

Q. Under that item appearing on sheet 2 you show that you got a profit of $892.36.

Mr. Crawford: No, that is a gathering charge.

Mr. White: You mean a profit or an earning?

Q. Or earnings instead of profits.

Mr. Crawford: It is a gathering charge.

Mr. Avis: He carries it in his gross revenue.

A. That is really a bookkeeping entry, to adjust that portion of the one per cent on the books.

Q. You got some moneys from it though, did you not?

A. That is the amount of money, yes sir.

Q. Or some oil in kind that produced that amount of money?

A. Yes sir.

Q. Please explain how you arrive at the amount $892.36 appearing on sheet 2 of Plaintiff's Exhibit Number 4?

720 A. When there is a tender issued by a shipper, say for 100,000 barrels, he pays the gathering charge on the full 100,000 barrels although there is a deduction of one per cent. The proportion of the one per cent that is delivered to the other lines, being their proportion that they are entitled to, is passed along and is included in the item on sheet 1. But the remaining propor-

tion—this is the Eureka's proportion of that to credit out of that account.

Q. You have under that item The Eureka Pipe Line Company's proportion of the one per cent deduction on Eureka tenders 4,461.86 barrels shown. Is not that true?

A. Yes sir.

Q. Is it estimated by you or shown on your books that that number of barrels was gained under the one per cent allowance which appears in the regulation on the I. C. C. tariffs?

A. That amount was just as it is stated there, the Eureka's proportion of the one per cent on the tenders that were forwarded during that period, in oil.

Q. That relates solely to oil produced in West Virginia, does it not?

A. Yes sir.

Q. You received a gathering charge on that oil?

A. Yes sir.

Q. A gathering charge of twenty cents per barrel during
721 that period?

A. Yes sir.

Q. Didn't you also receive the oil itself?

A. We received the oil.

Q. Of 4,461.86 barrels. That is correct, is it not?

A. Yes.

Q. What becomes of that oil?

A. That is supposed to be lost in transit, and very likely is.

Q. If it is lost in transit how do you get a profit on it?

A. That is the bookkeeping entry, to take up that proportion of the one per cent that is not delivered.

Q. That one per cent is an addition to the two per cent provided for evaporation and waste appearing on I. C. C. tariff No. 151, is it not?

A. Yes sir.

Q. What I cannot understand is why you apply twenty cents to that oil for one per cent deduction. I would like you to explain it. I don't understand it.

A. I have explained why we apply the twenty cents and the one per cent.

Q. You have already got twenty cents on the two per cent on the same oil, have you not, in the illustration you have used?

A. We do not use the two per cent on any tenders what-
722 ever. The two per cent is just what we call our "over and short account." We do not account for that to anyone. The two per cent is not credited to anyone. It is merely deducted from the purchasers.

Q. But you get the benefit of that two per cent. if that quantity of oil is not wasted, do you not?

A. It helps make up for our losses.

Q. In other words if you gather in the State of West Virginia during the period that you have referred to, in round numbers 6,000,000 barrels of oil before it went forward on tenders you do

deduct from that quantity two per cent. for evaporation and waste, do you not?

A. Yes sir.

Q. And that would amount to how many barrels?

A. It would be 120,000 barrels.

Q. Don't you keep a record of that similar to the record you keep of the one per cent. deductions?

A. No, it is a different matter. The one per cent is on tenders or tendered going through. The other oil is not tendered.

Q. I thought you said that the one per cent. referred to oil in West Virginia in transport?

A. Yes sir, transported.

Q. But that only applies to oil that has been tendered?

723 A. Yes sir.

Q. And on oil that has not been tendered you do not make a two per cent charge for evaporation and waste?

A. We make the charge when the oil is produced and run from the producer,—the two per cent.

Q. To illustrate, if I were a producer and would deliver to you unconsigned one hundred thousand barrels of oil, you would charge me two per cent. of that oil or two thousand barrels for evaporation and waste, would you not?

A. When that oil is produced?

Q. When it is first delivered by me as a producer, would you not?

A. Yes sir.

Q. If in thirty or sixty days I should tender that oil for shipment without the state or that quantity of oil we will say for shipment out of the state, you would make an additional charge of one per cent., wouldn't you?

A. Yes sir.

Q. In other words you would get on the handling of that oil three per cent. or three thousand barrels, wouldn't you, under those circumstances?

A. That would mean that you would lose the three per cent., but the Eureka would not get it. They would get only a proportion of that one per cent.

724 Q. But you would get all of the two per cent?

A. All of the two per cent.

Q. And you keep no record whatever of how much of the oil that is delivered to you in West Virginia is lost by evaporation and waste?

A. We cannot pick out what oil it lost on.

Q. No, but I mean the total quantity handled by you?

A. That includes all Pennsylvania grade oil in the system of the Eureka Pipe Lines, yes sir.

Q. Can you not tell from your books whether you have a profit either in oil or money on that particular oil?

A. On Pennsylvania grade oil; not that particular oil, no sir.

Q. Well, on Pennsylvania grade oil?

A. In the system, yes sir. We know how we come out.

Q. The Pennsylvania grade oil from the states that it is produced in, namely Ohio, and Pennsylvania and West Virginia, is all run in together in the lines in West Virginia, is it not?

A. Yes.

Q. And mixed up together?

A. Yes sir.

Q. And when you make a delivery of any quantity of Pennsylvania grade oil you cannot separate that oil and say whether
725 any or all of it came from any particular state, can you?

A. No, you cannot.

Q. If from all of the oil that you handle in West Virginia you gain something either in oil or money, do not your books show it?

A. Yes sir.

Q. Then I am trying to ask you what did you gain during the period ending June 30, 1919 under the regulations that I have referred to?

A. The net gain, counting your losses,—I haven't got the figures here, but we do not make any gain.

Q. What do you mean by counting your losses?

A. Well, you lose oil in handling it from the stations and you lose it by accident and lose it by evaporation.

Q. What I am referring to is evaporation and waste. You have no right to make that charge as I understand it except for evaporation and waste. Haven't you some record that shows how much you lost from handling and how much you lost from evaporation and waste?

A. No, I think not. I think we can give you the total losses against that.

Q. I would like for you to do so.

Mr. Crawford: Handling is a kind of waste. It is not
726 right to make such a distinction.

Q. Will you do it, please?

A. I think I can get those figures for you.

Q. Your figures show how much is lost from evaporation and waste, don't they?

A. On all oils, yes.

Q. On all Pennsylvania grade oils?

A. Not separately. From my records here I could not show you that separately.

Q. I mean from all Pennsylvania grade oil that is dumped into your pipe line system in West Virginia as you have described it?

A. Including Buckeye and South West and all that oil you mean?

Q. Or Pennsylvania grade oil?

A. Not from my records here. I could give you the Pennsylvania including Somerset, Corning and Cabell bunched. I don't think I could give it to you separately.

Q. We will say that Somerset oil moves as it does from Kentucky. Doesn't the Cumberland Pipe Line Company collect two per cent. down there and then one per cent. on tenders?

A. Yes.
Q. And don't you get your share of that?
A. It is three per cent. in the Cumberland.
727 Q. Three per cent. in the Cumberland.
A. Yes.
Q. That is collected by the Cumberland Pipe Line Company?
A. Yes sir.
Q. And then on that that goes forward on an I. C. C. tariff, there is an additional one per cent?
A. Yes.
Q. Making four per cent in all?
A. Yes sir.
Q. Isn't there some distribution of those deductions of three and one per cent between the Cumberland and The Eureka Pipe Line Company?
A. The Eureka simply gets a proportion of the one per cent.
Q. Of the one per cent?
A. Yes.
Q. The Cumberland gets all of the three per cent?
A. Yes sir.
Q. Then if you lose some oil of the Somerset grade you would charge that against the two per cent you are allowed on the West Virginia oil run, do you not?
A. What I mean when I say I could not furnish you figures here in New York,—that would be all the figures I could give you here, but we could furnish that from each oil in Oil City or the
728 Pittsburgh office, but it would take some time.
Q. Don't you know, Mr. Swisher, as a matter of fact that your company made a profit either in oil or money on the oil gathered in West Virginia on account of that two per cent charge for evaporation and waste?
A. I do not know.
Q. Isn't it a fact that you charged against that two per cent your losses on oils other than from evaporation and waste or handling or in other ways, or on other oils such as Somerset oil, the Corning oil and the Mid-Continent oil?
A. We keep the oils separate and the accounts separate for the losses and the gain, but not West Virginia crude alone of the Pennsylvania grade, you understand.
Q. You charge against that two per cent collected on the oil gathered in West Virginia your losses from all other sources in the handling and transportation of oil, and from the handling and transportation of grades of oil that are not produced in Pennsylvania, do you not?
A. Yes, it is all kept in the one account.
Q. The question I am asking you is this, can't you tell whether you made a profit or not under that two per cent provision under the oil gathered in West Virginia by your company from your records?
A. I don't think we can.

729 Q. If under that regulation as to two per cent of the oil gathered in West Virginia you have charged to your losses in the handling of other grades of oil not produced in West Virginia, you have made a profit on the oil that you have gathered in West Virginia under that provision or regulation, have you not?

A. Probably we have. I cannot say.

Q. You know what the total amount of oil gathered or handled by you in West Virginia is, don't you?

A. Yes.

Q. And you know the total amount of barrels of oil or the oil supposed to have been earned under that two per cent, don't you?

A. Yes.

Q. That is true?

A. Yes.

Q. If you deduct your losses for evaporation and waste or in any other respect for any oil you handle not produced in West Virginia you could tell what your profit was in West Virginia on that oil, could you not?

A. Counting all the losses against two per cent, yes.

Q. Can you not give us those figures?

A. There would be no gain.

Q. I don't think you undertsand me?

A. Possibly not.

730 Q. Suppose that you under the two per cent regulation earned an apparent profit of $120,000 during the period we have referred to, and suppose you charge against that profit all of your losses from the handling of other oils that are not handled under tariff No. 161 on which this regulation appears, can you tell what your apparent profit is on this particular West Virginia oil that you have gathered?

A. I cannot.

Recess until 2:45 P. M.

731 Afternoon Session.

By Mr. Avis:

Q. Mr. Swisher, I will ask you to turn to the I. C. C. tariff 151, which has been cancelled by I. C. C. 160, and in connection with the previous questions that I have asked you about the regulation appearing on these two tariffs that permits a reduction for evaporation and waste of two per cent of the amount of oil run, I ask you what revenues you received from that source, in money or oil, as distinguished from profit? I mean, referring to the period covered by my previous questions.

A. The amount of oil received during that period from the two per cent amounted to approximately, about 125,000 barrels.

Q. How did you carry that on your books, as oil or its equivalent in money at the market price?

A. No, that was carried in what we call an over and short account, as oil.

Q. During all of the period ending June 30, 1919, the market value of oil was at least $4.00 a barrel, was it not?

A. I presume so.

Q. Well, don't you know so, Mr. Swisher?

A. Well, yes, I could say I know so.

Q. And during part of the time it was four dollars and a quarter a barrel, was it not?

A. Yes sir.

Q. Now then, if the number of barrels of oil received for
732 evaporation and waste had been sold, you would have gotten at least $500,000 for that oil at the lowest market price that prevailed during the period already referred to, would you not?

A. If we could have saved the oil, and sold it.

Q. Well now, suppose you had a lot of oil, let us say, of the Corning grade of oil, how could you have charged the loss of the Corning grade of oil against the two per cent of Pennsylvania grade oil?

A. We would not.

Q. What would you charge against that $500,000 worth of oil?

A. We kept the oils all separately.

Q. Then what do you charge against the $500,000 worth of oil you received during the period mentioned?

A. We found we lost more than 500,000 barrels of oil during that period.

Q. Of the same grade, of the Pennsylvania grade?

Mr. White: He is speaking in dollars, and you are speaking in barrels.

The Witness: We found we lost the 125,000 barrels of Pennsylvania grade of oil.

Q. That is, of the Pennsylvania grade of oil that is produced in West Virginia?

A. All sources; that is produced in West Virginia, as well
733 as oil coming from other pipe lines.

Q. Then in other words, you charge against the oil produced in West Virginia, of the Pennsylvania grade, all of the oil of that same grade that comes from other states, namely Ohio and Pennsylvania?

A. We cannot tell which grade of oil is lost; I mean, which oil is lost, from where it is produced, of the same grade.

Q. No, that is not my question. When you say that you believe or find that you lost during the period mentioned over $500,000 worth of oil, I ask you if you lost during that period, by evaporation and waste, $500,000 worth of oil that was produced in the State of West Virginia?

A. I cannot say.

Q. Have you no idea?

A. We have no records to show it.

Q. No records to show it. But as a matter of fact, if you had received $500,000 worth of oil from the oil gathered by you in the State of West Virginia, and you suffered a loss on the Pennsylvania grade of oil that was produced in some other state, you would charge

the loss of Pennsylvania grade of oil received from some other state against your profit received from the gathering of the Pennsylvania grade of oil in the State of West Virginia, would you not?

A. It is all charged against the Pennsylvania grade stock.

734 Q. Then when you refer to evaporation and waste amounting to $500,000 worth of oil during the period mentioned, you mean the evaporation and waste of all the Pennsylvania grade of oil handled by you, not particularly of the Pennsylvania grade of oil that is produced in West Virginia and gathered by you, do you?

A. I beg your pardon, let me hear that question again, please.

(Pending question read.)

A. I mean the losses of the Pennsylvania grade of oil amount to more than the two per cent. deductions.

Q. Now explain your answer. What Pennsylvania grade of oil, produced where?

A. Pennsylvania grade oils in The Eureka Pipe Line Company's system.

Q. That comes into your system from any——

A. (Interposing.) All sources.

Q. All sources. Then I understand from your testimony that not as much as the 125,000 barrels of oil that you received under the regulation referred to was lost by evaporation and waste, of the oil gathered by you in West Virginia?

A. I do not know what oil it was lost on.

Q. I do not mean the physical quantity of oil, but do you mean to convey the impression that out of the six million and some

735 odd thousand barrels of oil handled by your company which was gathered in the State of West Virginia, 125,000 barrels was lost by evaporation and waste?

A. I only know that of all the Pennsylvania grade oil in The Eureka Pipe Line Company's system, we lost over that amount of oil.

Q. How much over did you lose?

A. I cannot tell. In the neighborhood, I think, of probably thirty or forty thousand barrels.

Q. By evaporation and waste?

A. I don't know, just losses; all kinds of losses.

Q. All my questions, every question I have asked you, if you have not understood me, I want to explain to you now, referred to losses by evaporation and waste.

A. What do you mean by "waste"?

Q. What do you mean by "waste" in your tariff? You handled the oil under your tariff.

A. Well, waste is—We receive oil from wells; when we run a producer's tank we do not get that amount of oil in our tank; in our stock tank. That would be waste, as I would figure it.

Q. Well, would that be waste? Suppose you lost that oil by accident, would you call that waste?

A. No, sir.

736 Q. Suppose you lost it by negligence, would you call that waste?

A. I am not familiar with just how they do call those, or figure them, entirely.

Q. Well now, assume that I am a producer of oil in West Virginia, and deliver to you 100 barrels of oil; you charge twenty cents, or a total of $20 for gathering the entire 100 barrels, do you not?

A. Yes.

Q. But you only credit me with ninety-eight barrels, is that not a fact?

A. No, you are wrong; we credit your account with ninety-eight barrels.

Q. Well, that is what I said.

A. And when the shipment was made we would only collect on ninety-eight barrels; we would only ship ninety-eight barrels.

Q. Then you would only collect the twenty cents gathering charge——

A. (Interposing.) We would only collect the gathering charge on oil when it is shipped.

Q. That is, on the net amount of oil standing to my credit on the books of the company?

A. And what you would have to tender.

737 Q. Well, I am not talking about oil that goes out of the state. But it is this way; assume that I am a producer in what is known as the Cabin Creek field, or known as the Kanawha field, and I deliver to your lines in Kanawha County, West Virginia one hundred barrels of oil, unconsigned and untendered. How would you carry that on your books? Would you credit me with ninety-eight barrels at that time, or credit me with one hundred barrels?

A. You would be credited with your run, less the two per cent., or ninety-eight barrels.

Q. That is what I said, ninety-eight barrels. Then you would receive two barrels to your credit right there, off-hand, would you not?

A. Yes.

Q. All right. Now assuming that the market price of that oil was $4.00 a barrel, that would amount, in money, to $8 00, would it not?

A. Yes, at that figure.

Q. Now, when you collect the gathering charge of twenty cents a barrel, how much would you charge me?

A. We would collect on your ninety-eight barrels, that is all you would have to tender.

Q. Then you would only charge me a gathering charge on ninety-eight barrels?

738 A. Yes, sir.

Q. Which would be $19.60?

A. Yes, sir.

Q. Now when I tendered to a consignee outside of the state the ninety-eight barrels, how much would you give me credit for having tendered? Would you give me credit for the ninety-eight barrels, or would you not take another one per cent. off that?

A. We deliver the ninety-eight barrels, less .98 of a barrel, outside of the state.

Q. That is what I said. Then that would be one per cent. of ninety-eight barrels?

A. Yes, sir.

Q. So that actually on the transaction I should only collect, at the selling price of the oil, on 97.02 barrels?

A. If you were the shipper, producer and refiner that is what it would amount to, yes.

Q. It would amount to that whether I were the refiner or not, if I were the mere shipper, would it not, or selling it or transferring it?

A. If you were to sell it you would have your ninety-eight barrels to sell, if you were a producer. You would get ninety-eight barrels and you would sell that and get your money for that.

739 Q. If I tendered ninety-eight barrels for delivery to myself outside of the state, and I were not the producer, how much would I get?

A. You would have deducted .98 barrel, from that ninety-eight barrels.

Q. Now, what difference does it make if I am the producer and shipper to somebody else outside of the state, one or the other of us would have to forfeit that .98 barrel, would we not?

A. One or the other would.

Q. But you collect it in the first place, from me, do you not?

A. From the producer.

Q. From the producer, yes.

A. The two per cent.

Q. Well then, does the consignee ever pay for it?

A. The consignee?

Q. Yes?

A. When the oil is tendered to a consignee, say a thousand barrels, he only gets nine hundred and ninety barrels when it is delivered outside of the state. Now I don't know how much he pays for, but that is all he would get in the way of oil delivered to him.

740 Q. About what was the average distance that your company transported oil between points within the State of West Virginia on I. C. C. No. 151?

A. I don't know.

Q. Well, give us some idea.

A. I have not the least idea.

Q. Haven't you? Well, if I deliver you five hundred barrels of oil at Hamlin Station, Lincoln County, West Virginia, you would move that oil on to Morgantown, West Virginia, most probably, would you not, or some one of the stations from which oil is tendered for shipment out of the state?

A. That is the natural stream of the oil, yes.

Q. Yes. Now, about what distance is it from Hamlin Station, in Lincoln County, West Virginia, to Morgantown through your lines?

A. I don't know, I suppose 150 miles.

Mr. Avis: Does anybody know, can you supply the exact distance?

The Witness (after inspecting map): It would be about one hundred and seventy miles.

Q. What distance is it from the Tug River Station, where you receive Somerset oil, to Morgantown?

A. Well, that would be about one hundred and ninety miles.

Q. About one hundred and ninety miles. And how far is it from Morgantown to the point of connection with the South-

741 ern Pipe Line Company?

A. I think it is about twelve miles.

Q. Then Somerset oil moves over your lines a distance of over two hundred miles, does it not, from Tug River to the point, if any of it goes out of the state, that you deliver to your connecting carrier; does it not?

A. Yes sir.

Q. Referring to Somerset oil, I desire to ask you this question: that if Somerset oil is tendered to the Cumberland Pipe Line Company for transportation to Bayonne, New Jersey, notice of tender is served upon you and the oil is delivered in your tanks at Tug River, all that would be collected on the oil under the I. C. C. tariffs, for waste, would be one per cent., would it not?

A. Yes sir.

Q. And of that one per cent you would only get your proportionate part, would you not?

A. Yes sir.

Q. What is the station in Kentucky of the Cumberland Pipe Line Company nearest to the West Virginia line or Tug River, at which oil is collected for tender of shipment?

A. I should judge twenty miles.

Q. Now then, if a shipment, or batch as you call it, of 75,000 barrels of Somerset oil was tendered to the Cumberland

742 Pipe Line Company at that point, that station just referred to, for transportation to Bayonne, New Jersey, only one per cent would be collected, would it not, by the Cumberland Pipe Line Company, for waste?

A. For distribution among the several carriers, you mean?

Q. Yes.

A. Yes sir.

Q. And that oil would travel over your lines a distance of about 202 miles, would it not?

A. Yes sir.

Q. And of the one per cent you would only get your proportionate part, is that not true?

A. Yes sir.

Q. And you would get no additional allowance for waste and evaporation, would you?

A. No sir.

Q. In other words, it would be apportioned among the Cumberland Pipe Line Company, The Eureka Pipe Line Company and

the Southern Pipe Line Company, would it not, on its way to Bayonne, New Jersey?

Q. And other lines.

Q. And other lines Well, those are the three carriers——

A. (Interposing.) There are other carriers.

Q. And other lines. How many other lines would there be?

743 A. There is the National Transit Company and the Tuscarora Oil Company, Limited.

Q. Then that one per cent would be apportioned among all these companies, would it not?

A. It would.

Q. And for all of your handling a distance of 202 miles, you deem your proportion of that one per cent a reasonable amount for evaporation and waste?

A. We just live up to the regulations. I have no opinion in the matter.

Q. Well, these companies establish those regulations, do they not?

A. The different carriers, I believe, do.

Q. Yes. Well, the Cumberland and The Eureka and the Southern Pipe Line Companies are all companies that you represent as general shipping agent, do you not?

A. I represent those.

Q. Now then, the one per cent is deemed a reasonable and satisfactory amount to cover loss by evaporation and waste for the transportation of that oil over those three lines, in connection with the other two carriers that you have referred to, is it not?

A. I do not know whether it is satisfactory or not.

Q. Well, does it cover the loss?

A. I hardly think it does, in The Eureka Pipe Line Company.

744 Q. Well, what would be your proportion of that one per cent of that Somerset oil that is tendered, as we have just stated, from Bayonne, New Jersey?

A. We have a divisional rate sheet here, but—Do you mean approximately?

Q. Yes.

A. I would say approximately one-third.

Q. It would not exceed a third, would it, Mr. Swisher?

A. Well, it depends upon the length of mileage, of course, between the Cumberland points and clear through to Bayonne.

Q. We have taken a Cumberland point of about twenty miles.

A. I don't know whether it would exceed a third or not.

Q. You have told us how far that oil would travel through the lines of the Cumberland, how far it would travel through the lines of The Eureka Pipe Line Company; now please tell us how far that oil, consigned to Bayonne, New Jersey, would travel through the lines of the Southern Pipe Line Company?

A. I would say approximately 150 miles of the Southern.

Q. And then how far over the lines of the other companies, approximately, respectively?

A. Probably sixty miles of the National Transit and fifty miles of the Tuscarora. These are approximate figures, you understand.

Q. Yes, I understand.

745 A. And the Cumberland Pipe Line Company would have over 100 miles.

Q. Not in the case that we proposed, because it was not tendered until it got within twenty miles of the state line.

A. Yes sir, there is an approximate mileage for all the stations on the Cumberland Pipe Line Company.

Q. But this oil was tendered to you at some other point?

A. The division of the rate is governed by the approximate number of miles the company has on all the stations mentioned in the tariff.

Q. Well, assuming that you got one-third of that one per cent for the transportation over the lines of The Eureka Pipe Line Company, does that cover the loss from evaporation and waste, over your lines or in your lines?

A. Evaporation and waste—You don't mean all losses, do you?

Q. No sir, I mean evaporation and waste

Mr. Crawford: You mean in relation to this particular oil you are talking about?

Mr. Avis: I am talking about this particular Somerset oil moving to Bayonne, New Jersey.

A. I don't know.

Q. Now, you allowed for gathering oil at your Hamlin, Lin-
746 coln County, Station, and transporting it to Morgantown, a distance of about 170 miles, as you have stated, two per cent of the oil so transported for evaporation and waste, have you not?

A. Yes sir.

Q. Then if that oil is tendered for shipment to a point outside of the state at Morgantown, you get a part of the one per cent on the tender at Morgantown, do you not?

A. Yes sir.

Q. Then in the case of the oil that you carry 170 miles from Hamlin, Lincoln County, to Morgantown, you get about six times as much for evaporation and waste as you do on the Somerset oil that we have been talking about, do you not?

A. You mean counting the two per cent when it is gathered from wells, included in that?

Q. No, The Eureka does not get any two per cent on oil gathered in Kentucky, does it?

A. Oh no, no, I misunderstood your question, I guess.

Mr. Avis: Read my question back to the witness, please.

Q. (Question read: "Then in the case of the oil that you carry 170 miles from Hamlin, Lincoln County, to Morgantown, you get about six times as much for evaporation and waste as you do on the Somerset oil which we have been talking about, do you not?")

A. That is the way of it.

747 Q. That is the way it works. And in addition to that six times as much that we have just referred to, you get something else if it is tendered in Morgantown for shipment outside of the state.

A. In money?

Q. In oil or money, however it is adjusted.

A. I did not get that last question. Get something else? I don't know what you mean by that.

Q. Well, you have just stated that on oil that you transport from Hamlin, Lincoln County, which is a distance of 170 miles to Morgantown, you get six times as much for transporting it that distance as you do for the oil which is tendered to you by the Cumberland Pipe Line Company for shipment to Bayonne, New Jersey, which tender was made at some station the name of which you mentioned, about twenty miles from the West Virginia-Kentucky line. That is true, is it not?

A. Yes, I believe so.

Q. You have also stated that on the oil which you transported from Hamlin, Lincoln County, which was not tendered to you for shipment outside of the state until after it reached Morgantown, you get something else; did you not?

A. We get a proportion of the one per cent to Morgantown.

Q. Then I say, six times as much for evaporation and waste, for the oil which is produced in West Virginia and transported
748 over your lines to points outside of the state, as you do for the evaporation and waste that might occur in the Somerset oil that was transported by you, tendered to you in Kentucky, about twenty miles from the state line?

A. Yes, but as I understand it, that includes the two per cent on runs from wells.

Q. You do not get any two per cent on any oils produced in Kentucky, do you?

A. No sir, I thought you were figuring on the Eureka oil. The Eureka oil, six times would include the two per cent and a small proportion for Morgantown. Is that not your figure?

Q. Which would make it over six times as much as you would get on the Somerset oil produced in Kentucky?

A. Yes.

Q. And yet the distance that you transport it would be shorter, would it not, in the lines of the Eureka?

A. Yes.

Q. Now, do you tell me that no account whatever is kept by your company on which you can give any idea as to evaporation and waste during any year, approximately?

A. We cannot, for the West Virginia oil.

Q. Well, on Pennsylvania grade of oil, we will say?

A. Pennsylvania grade of oil in West Virginia, I believe, we can.

749 Q. Why is it you cannot give it for West Virginia oil?

A. All the oils are kept together in a general stock.

Q. Well, the Pennsylvania oil goes into that general stock, does it not?

A. Yes sir.

Q. That comes into your lines?

A. Yes sir.

Q. Why do you keep books to show, or records to show what your loss from evaporation and waste is on Pennsylvania oils, which go into your lines, produced in other states, and cannot give us the information about the West Virginia oils?

A. We keep it all together. The West Virginia oils and Buckeye oils and all are Pennsylvania grade oil. We can only give it as a total.

Q. You do not give the Corning oil, given to you by the Buckeye Company, as Pennsylvania grade, do you?

A. No sir, Corning oil is a separate grade of oil. I did not intend to have Corning included in the Pennsylvania grade of oil. We could give that for Corning, too.

Q. You said Buckeye, and Buckeye includes Corning.

A. When I said Buckeye oil, I meant Pennsylvania grade received from the Buckeye Pipe Line Company.

Q. Do not your records show, or can you not tell from your records or can it not be ascertained from your records, your gain
750 or loss in oil by taking the quantity that still remains in your lines or tanks?

A. We can give you the losses and gains for that period, from Pennsylvania grade oil.

Q. What is the end of the fiscal year of your company?

A. I do not know as I know.

Mr. Avis: Well, I will let anybody supply it here.

Mr. Toll: The calendar year.

Q. The calendar year. Then your records are kept from the first of January to December 31 inclusive in each year, are they not?

A. We could give it for any period.

Q. Then you would know how much oil had been delivered to you of the Pennsylvania grade during that period, would you not, that went into your tanks and pipe lines in West Virginia?

A. Yes.

Q. At the end of that period you would know how much you had transported and delivered to other persons, firms, corporations, or connecting carriers, would you not?

A. Yes sir.

Q. Now by deducting one from the other you could tell how much remained in your pipe lines, if any, could you not?

A. Oh, yes. You mean pipe lines, counting the stock in tanks and pipes, of course?

751 Q. Yes sir; and the difference, if there were some left would be your gain of that?

A. Or loss.

Q. Gain or loss. Well now, suppose there was a loss, how would you make up that loss?

A. If we did not have any oil in our over and short account—our over, that would be gain—we would have to reduce our liabilities by paying for so much oil.

Q. In money or kind?

A. In money.

Q. In money. Now then, your records show those things, do they not?

A. Yes sir.

Q. I would like for you to secure that information, and request the plaintiff to furnish that information for the twelve months ended Dec. 31, 1918, or if it is more convenient for you we would prefer it for the twelve months ending June 30, 1919.

A. That will take some little time.

Q. Well, we will call for it and ask for it to be produced before this hearing closes. By "some little time" how much time do you mean?

A. Well, I would really have to get that from Oil City, and arrange for that myself. It will take three or four days, probably
752 or the week.

Mr. Avis: That is all right. Just file it with your testimony.

Mr. Crawford: There is no objection, so far as I know, to having the information, Captain Avis, but it may not be available until after this hearing closes. I do not know how long the hearing will last, and it will have to be put in in the form of a table.

Mr. Avis: You.

Mr. Crawford: I think, therefore, you ought to now dictate a succinct requirement or a requisition there, summing up what you have said, that you request that you be furnished with so and so.

Mr. Avis: I would like to know how much of the Pennsylvania grade of oils, showing the quantity of oil of that grade that was produced in West Virginia and the quantity of that oil that came into your lines from other states, respectively, was received by your company for the year ending June 30, 1919; the total amount of deliveries to persons, firms and corporations out of this mixed stock of Pennsylvania grade of oil; and how many barrels, if any, remained in your pipe lines and tanks and storage places at the end of that period. And if any of that oil had any charges made
753 against the account for evaporation and waste, what those charges embraced and covered; and if it can be ascertained how much was charged off of the account for evaporation or waste, let it be shown in this exhibit, and the amount charged off on account of other causes, showing such other cause or causes.

Mr. Crawford: Well, you want to include the amount that was on hand at the beginning of the period?

The Witness: To make it balance, of course.

Mr. Crawford: In order to make it balance.

Mr. Avis: All right; the amount shown at the beginning and end, that is all.

Q. You can give that information, from your records, can you not?

A. Yes. It may be a week before I can get around to it.

Q. I understand what evaporation means, at least I think I do, but I do not know what, in construing this tariff, you consider to be waste. Will you please tell us what you cover in construing the tariffs by the word "waste," or what you embrace?

A. Well, I do not know as I can explain it to you either, Mr. Avis.

Q. Will your records show?

A. We do not show anything as waste in our over and
754 short; we have a number of items, how we show our gains and losses.

Q. Suppose in transit a barrel of oil should burn up from whatever cause, would you call that waste?

A. Oh, no. No, there would not be any waste, that would simply be a loss, on account of the burning up of the oil.

755 Q. Would you charge that against you evaporation and waste?

A. We would make a separate item of that as being lost on account of the burning.

Q. But you would charge that as against this one per cent?

A. No, sir, that would not be included in that. We buy that oil to make good that loss by fire.

Q. The oil in tanks is covered by insurance, is it not?

A. In iron tanks it is, but not in wooden tanks.

Q. Do you pay the insurance out of this fund, the premiums for insurance out of this fund?

A. There is not any fund there. We just lose oil. It is just paid out of the general expenses. I don't know what account it would be charged against if you buy it for that purpose.

Q. Suppose at the end of the year you had more oil than the storage capacity of your pipes and tanks, some of which was the oil that you received for evaporation and waste, what would you do with that oil?

A. I don't know, we never had any such a case as that.

Q. You never have had any such case of that kind?

A. No.

Q. That is because you are moving the oil all the time?

A. We are moving the oil all the time, yes, sir.

Q. Does your Exhibit No. 4 relate to all of the oil gathered
756 in West Virginia, or does it simply refer to 98 per cent of the oil that goes to the credit of the producer or his transferees?

A. These amounts shown on here are 100 per cent oil, if that is what you mean. When we show we deliver 802,164.22 barrels shown on the first item, that is actually 802,000 barrels, etc.

Q. That is the oil you delivered?

A. Yes.

Q. But it does not show it is 100 per cent of the amount of oil you received?

A. The two per cent does not enter into that at all.

Q. You received some additional revenue, did you not, for gathering that two per cent, namely, 20 cents a barrel?

A. No, sir, and we never take a revenue from anything unless it is delivered. We do not show any deliveries in that two per cent.

Q. In your Exhibit 4 and in your testimony you stated that the quantity of oil produced in West Virginia and delivered to you by producers or their transferees amounted in round numbers to six million barrels, did you not?

A. That is the total, yes, sir.

Q. Is that the total of the oil received by your company and handled and transported by your company from producers in West Virginia?

757 A. That is the total amount of oil that was actually delivered to these parties.

Q. Can you not answer my other question?

A. I don't know as I understand it.

Q. This Exhibit No. 4 does not cover the total amount of oil that was produced in West Virginia and delivered in your pipe lines, does it?

A. It only covers the amount of oil that was actually delivered during that period in that amount we received in the way of runs.

Q. You received two per cent more than that, did you not?

A. The two per cent is not included in here at all.

Q. I understand, but I am asking you if you did not receive two per cent more than is shown by this exhibit to have been produced in West Virginia?

A. The runs, yes, the course of runs would be the two per cent more than that, if that is what you mean.

Mr. Avis: That is what I mean, yes.

Adjourned to Thursday, December 4, 1919, at 10 A. M.

758 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et als.

New York, December 4, 1919.

Met pursuant to adjournment.

Appearances:

For the Plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.

For the Defendants: S. B. Avis, W. Gordon Mathews.

VERNON S. SWISHER resumed.

Cross-examination.

Continued by Mr. Avis:

Q. Mr. Swisher, on yesterday I inquired as to the length of your lines through which oil passed from Hamlin, Lincoln County, West Virginia, to Morgantown and from thence on to the West Virginia-

Pennsylvania boundary line. Isn't that about the farthest distance that your company transports oil which it gathers in West Virginia?

A. I believe it is.

Q. You gather oil in West Virginia at all points to which your pipe line system extends as shown on the map which was
759 introduced here in evidence by the plaintiff marked Plaintiff's Exhibit 3, Third Map, do you not?

A. At all points where there is any production.

Q. There is production at all points where your lines are in operation, is there not, or have not been abandoned?

A. Practically so, I believe.

Q. What is the average distance that you transport oil which is gathered in West Virginia, approximately?

A. I could not give you the approximate distance. I don't believe I know.

Q. It would not be 100 miles, would it?

A. I could not say that.

Q. You have some idea or knowledge on the subject, haven't you?

A. No sir, I would not be prepared to say.

Q. As the general shipping agent of your company?

A. I do not know.

Q. Does your company ever transport oil from the stations to which the tariff of your company relates prior to the time it is actually tendered?

A. They have done so as stated yesterday, before a tender was made.

Q. You named certain stations or a certain station, I believe the only one was Core last year you stated was the only
760 one that you referred to?

A. Core,—I believe that would be all, the only station.

Q. I understood you to say in explaining the mistake in your testimony, that no oil that went out of the state and back into the state had been transported from Bula during the year ending June 30, 1919?

A. No oil in that manner.

Q. But you did not state whether any oil had ever been transported from Bula for points outside of the state for which no tender had been made, did you?

A. No, but there may have been a little, I am not sure.

Q. May there not have been some that you started and sent out of the state or rather delivered to connecting carriers for transportation out of the state in advance of a tender of that oil?

A. No sir, except in the case cited yesterday, Butler District.

Q. Where?

A. The Somerset oil.

Q. The Butler District in Wayne County?

A. Yes.

Q. Didn't you during the year ending June 30, 1919 start oil from Morgantown before there had been a tender of the oil?

A. No sir.

761 Q. I will ask you to state if your company during last

year did not start oil out of the state or start oil for transportation out of the state consigned to certain persons, firms or corporations in advance of such persons, firms or corporations having oil on hand and to their credit?

A. From what points?

Q. Any points.

A. Just as I recited yesterday, these small amounts from Core and possibly from Bula.

Q. Those questions related to before there was a tender on I. C. C. tariff?

A. I beg your pardon, I may have misunderstood your question.

Q. My question relates to this, hasn't your company started on its way for transportation outside of the state during the period we are referring to consigned to consignees, when they didn't have that amount of oil credited to them on the books of your company?

A. No sir.

Q. I am to understand from your previous answers that of the oil of the Pennsylvania grade that was forwarded on from Morgantown amounting to 3,638,517.02 barrels, that none of that oil was started by your company and delivered to the Southern Pipe Line Company prior to the time that there had been a tender of
762 it or some part of it, or to a consignee or consignees, when they did not have the amount of oil stored to their credit on the books of the company?

A. No sir, they all had a credit before the oil was started.

Q. Of the total amount?

A. Yes sir.

Q. In actual oil?

A. In actual credit balance.

Q. Let me put this question to you: Suppose a certain company during the period that we are referring to had a credit we will say of 60,000 barrels of oil on the books of the company, and said company tendered to you 75,000 barrels we will say, did you at any time during the year ending June 30, 1919, comply with an order attempted to be illustrated by the figures I have just named?

A. They always had a sufficient credit before a tender was issued.

Q. In other words your books never show a net debit in the amount of oil instead of a credit balance?

A. They do not.

Q. I wish you would turn to Plaintiff's Exhibit 4. You stated that this exhibit insofar as oil gathered in West Virginia is concerned only relates to ninety-eight per cent of the oil received by your company. That is true, is it not?

763 A. Yes.

Q. When that oil or any of it is tendered to you, when any of that oil was tendered to you for transportation beyond the state, how is the one per cent deduction handled?

A. When a shipper tenders 10,000 barrels of oil, it is taken out of an account we keep separate to his credit and put in his shipping account. Now we take out one hundred barrels of that, which would be one per cent, and there would be only 9,900 barrels to be for-

warded, and also a proportion of that one hundred barrels for the other lines' proportion belonging to the connecting carrier.

Q. Do you mean by that, that on the books of your company you would make a deduction of one hundred barrels?

A. One hundred barrels.

Q. That would be the first step taken to deduct that one per cent?

A. Yes sir.

Q. Would your company deduct in oil of that one hundred barrels its proportion of the one per cent?

A. Yes.

Q. For instance, if the oil was to go from Morgantown to Bayonne, New Jersey, how much oil would you hold of the one per cent?

A. Approximately there would be not more than six or
764 eight barrels I should say.

Q. And if you held eight barrels of the one hundred, then ninety-two would go forward?

A. Yes sir.

Q. Then the next carrier would take its proportionate part of that oil in kind?

A. Yes sir.

Q. And so on until it reached its destination?

A. Yes sir.

Q. Then there is never any money transaction in connection with that one per cent, or adjustment among the carriers or between the carriers as the case may be,—in money?

A. No, not for the oil that they take, not for the proportion of oil that they are entitled to.

Q. I mean for the one per cent?

A. No sir.

Q. No adjustment in money?

A. No sir.

Q. Can you tell us how much your pro rata of the one per cent of the oil handled by your company during the year ending June 30, 1919, amounted to in barrels?

Q. You mean for their pro rata proportion for oil received and going on, including Buckeye?

Q. Every company, the number of barrels of oil that you
765 earned, from transportation on all the oil handled. I am referring to the one per cent, from whatever sources received.

Mr. Crawford: I object to the question, particularly the use of the word "earned" in the question on the ground that it does not correctly represent the testimony and involves a conclusion of law.

A. I cannot furnish you that now. I can get the figures.

Q. In connection with the request I made yesterday as to the two per cent, please at the same time furnish that information as to the one per cent, will you?

A. Yes sir.

Q. And in explaining my previous question, what I want to know is what the total number of barrels of the different grades of oil han-

dled by you amounted to,—your company—during the year ending June 30, 1919, referring to your pro rate share for such oil?

A. This last question is in regard to the one per cent deduction?

Q. Entirely.

A. For all oils?

Q. All oils, yes sir, from wherever received.

A. Yes sir.

Q. This exhibit does not pretend to show any part of your pro rate of the one per cent received except the one item near the bot-
766 tom of sheet 2 of Exhibit 4, namely, "The Eureka Pipe Line Co.'s portion of the one per cent deductions on Eureka tenders," amounting in barrels to 4,461.86, rate .20, amount 892.36?

A. That is all.

Q. On sheet 1 under the heading "Pure Oil Co.—Morgantown, W. Va.," there appears 506,779.12 barrels. No part of that oil was delivered by you either to the Pure Oil Company or the Pure Oil Pipe Line Company on an I. C. C. tariff, was it?

A. No sir.

Q. And that is also true as to the item of 131,811 and some barrels?

A. I beg your pardon, that was delivered of course on I. C. C. tariff No. 151.

Q. But as to I. C. C. tariff No. 151, that is a tariff for gathering oil in West Virginia?

A. Yes sir.

Q. The intra state tariff?

A. Yes.

Mr. Crawford: I object to that. It is not an intra-state tariff. It is not solely an intra-state tariff.

Q. We will say, on intra-state transportation within the State of West Virginia?

A. Yes.

767 Mr. Crawford: I object to the question as calling for a conclusion of law.

The Witness: It was delivered on I. C. C. tariff No. 151.

Q. Well, you have said yes before the objection was made. I want to know whether you meant yes.

A. I meant that was the tariff it was delivered on.

Q. You were not carrying it on anything else or carrying it in any other way except between points within the State of West Virginia, were you?

A. No sir.

Q. And it had never been tendered to you for shipment outside of the state, had it?

A. No sir.

Q. Is not what you said about the 506,779.12 barrels also true about the 131,811.67 barrels that was delivered to the West Virginia Pipe Line Company at Littleton, West Virginia?

A. Yes sir.

Q. On yesterday you spoke of certain Mid-Continent oil that was

delivered to either the Pure Oil Pipe Line Company or the Pure Oil Company at Morgantown, West Virginia, amounting to 189,324.94 barrels, which was handled on I. C. C. tariff 48 which is marked Plaintiff's Exhibit 13. Was that oil delivered to the Pure Oil Pipe Line Company or the Pure Oil Company before you received
768 a notice of the tender of that oil or not?

A. It was not.

Q. What do you mean by that?

A. We had received a notice of tender before the delivery was made.

Q. I wish you would look at the bottom or near the bottom of sheet number 1 of Plaintiff's Exhibit 4, where you have the title or legend "oil produced in West Virginia (but not run by The Eureka Pipe Line Co.) and delivered to other carriers on I. C. C. tariffs." I will ask you if you do not mean by the words "not run" "not gathered?"

A. I do. It was not gathered.

Q. The oil under that heading for Marcus Hook, Pennsylvania, and Philadelphia, Pennsylvania, aggregating 269,170.27 barrels originated in the Cabin Creek District of Kanawha County, West Virginia, did it not?

A. Yes sir.

Q. That was Pennsylvania grade of oil, was it not?

A. Yes sir.

Q. In the course of transportation of that identical oil, it first went into your pipe lines, did it not, when it was tendered to you?

A. Yes sir.

Q. And then immediately it became mixed with the mass
769 of oil that was in your pipe line system in its transit to Morgantown and from there on to the point of connection with the Southern Pipe Line Company, did it not?

A. Yes sir, more or less mixed.

Q. Well, it was intermixed with the other oil of that grade in the pipe line, was it not?

A. It must have been.

Q. And there was no way then or now by which you could distinguish that oil from oil that was consigned to the three refineries referred to near the top of Exhibit 4, sheet 1, was there?

A. Not that I know of.

Q. In other words that identical oil may have gone to some of these refineries, may it not?

A. It depends upon geography. I don't know the way the lines run.

Mr. Crawford: What refineries do you mean?

Mr. Avis: Near the top of the page. There are only three refineries that ever have been referred to, the refinery of the Standard Oil Company at Parkersburg, West Virginia; that of the Ohio Valley Refining Company at St. Marys, West Virginia; and the Elk Refinery at Falling Rock, West Virginia.

The Witness: I don't see how it could get to some of those
770 points. The stream is going the other way, I believe.

Q. Look at your map now and see if you want to make that statement, Mr. Swisher?

A. I don't see how it could reach St. Marys.

Q. It could have gone to the Elk Refining Company which is immediately on the line of transportation of that oil, could it not?

Mr. Crawford: That is not immediately on the line.

A. It would take the man that runs the oil and understands the direction of that to tell. I could not say.

Q. Can you not see the direction from this map? You seem to have understood the directions about the other thing, Mr. Swisher?

A. It seems very possible.

Q. You won't pretend to say that that physical oil ever went out of the State of West Virginia, would you?

A. We cannot tell.

Q. You don't know because it is mixed with the oil in the state, is that not true?

A. Yes, that is true.

Q. I want to ask you if Plaintiff's Exhibit number 4 shows ninety-eight per cent. revenue and the two per cent. deduction for evaporation and waste, or the 97.02 per cent. revenue and both the
771 two and one per cent., about which you have been testifying, of oil received?

A. The deliveries shown on this report only cover the amount to the credit of the tenderers, and do not include the proportion of the one per cent. which the Eureka's proportion was.

Q. Or the two per cent. either?

A. Or the two per cent.

Q. If Plaintiff's Exhibit 4 only shows 97.02 per cent., then how is the twenty cents revenue on the .98 per cent. deducted as shown by Exhibit 4?

A. I tried to explain that in my answer yesterday. That is the full amount that we collected on the tender—we collected the full amount of twenty cents and this is the Eureka's proportion that does not go forward.

Q. That does not answer my question categorically. I would like the question to be read to the witness so that he gets it clear and can answer it.

(The question was repeated by the stenographer.)

Q. That can be answered by saying it is or it is not.

A. I don't get the question yet.

(The question was repeated by the stenographer.)

Q. You can answer whether it is or is not and then explain.

A. Is that the amount that is mentioned of the one per
772 cent. that was passed along with the tenders?

Q. That is the full one per cent. deducted.

A. The Eureka's proportion of the one per cent. is shown here, and the amount—the other part that was passed along is shown or included in the other table. A certain proportion of those amounts are the one per cent.

Mr. Crawford: I ask to have it noted on the record that I produce in response to the request of counsel for State of West Virginia the list of the officers and directors of The Eureka Pipe Line Company, the Cumberland Pipe Line Company, Incorporated, the South West Pennsylvania Pipe Lines, and the Southern Pipe Line Company, but I do not thereby intend to waive any objection that I have heretofore made to the introduction of them in evidence in regard to such matters.

Q. Mr. Swisher, I do not know that I understand the last answer and I want to put a concrete proposition to you in order to understand the same: Suppose your company received 100 barrels of oil in the State of West Virginia, you would first deduct two per cent. of that oil or two barrels, would you not?

A. Yes sir.

Q. That would be ninety-eight barrels to the credit of the producer, would it not?

773 A. Yes sir.

Q. If that quantity of oil is tendered for shipment to a consignee outside of the State of West Virginia your company first deducts one per cent or .98 barrels, is not that true?

A. Yes sir.

Q. Which would leave a balance of 97.02, would it not?

A. Yes sir.

Q. Your company would receive twenty cents for gathering ninety-eight barrels, would it not?

A. Yes sir.

Q. If Plaintiff's Exhibit 4 does not show the ninety-eight barrels of oil received, how is the twenty cents on the .98 barrels included in the revenue shown by the exhibit?

A. It is included in the first page. The other part of that is included in the amount on the first page.

Q. Don't say "the other part." Say what part you refer to please. I will ask that the question be repeated so that you will get the question in your mind. I want a categorical answer, if you can give it.

(The question was repeated by the stenographer.)

A. The twenty cents revenue collected on the portion of the one per cent, that is not included in sheet 2, that is included in the deliveries on sheet 1 as being the amount passed along and delivered to the other lines.

774 Q. Does it show your part of that?

A. Yes, it shows our part.

Mr. Crawford: What is that?

The Witness: 4,461.86 barrels.

Q. In other words, this item of 4,461.86 barrels shows all that you received during the period we refer to on oil that went out of the State of West Virginia?

A. Of all Eureka tenders that went out of the State of West Virginia.

Q. Did not you say on yesterday that Exhibit 4 shows only the actual amount of oil delivered?

A. I don't understand the question.

Q. The question was, did not you say on yesterday that Exhibit 4 shows only the actual amount of oil delivered?

A. If I did I did not intend to because that item was not delivered, and there was another item on account of that Centerbridge item that was not delivered during that period.

Q. By the first item you referred to you mean the item of 4,461.86 barrels?

A. That was not delivered.

Q. What was the amount of the Centerbridge item?

A. 4,279.63 barrels, the item included in the other total.

Q. Does Plaintiff's Exhibit 4 show your proportion of the one per cent of oil that you received on notices of tender from the
775 Buckeye Pipe Line Company, the Prairie Pipe Line Company, the South West Pennsylvania Lines or the Cumberland Pipe Line Company?

A. It does not show the Eureka's proportion of the one per cent received of those companies.

Q. And you have not carried that proportion in this Plaintiff's Exhibit 4 at all either in oil or in money, have you?

A. Not the Eureka's proportion, no sir.

Q. Then the Eureka's proportion of the one per cent *is* shown on this exhibit merely applies to the oil that you made delivery of to connecting carriers, is that not true?

A. That only applies to the Eureka's proportion of The Eureka Pipe Line Company's tenders that we made deliveries of.

Q. Does that apply to all of the Eureka's proportion?

A. Yes sir.

Q. On which you delivered on tenders?

A. Yes sir.

Q. Or does it simply apply to such oil as you delivered to the Southern Pipe Line Company?

A. It applies to all oil delivered to either line, the Southern Pipe Line Company or the South West Pennsylvania Pipe Lines.

Q. Does your company get the transportation rate on your
776 proportion of the one per cent of the oil received from others?

A. We get the transportation rate on any of the one per cent we transport for the other lines.

Q. Well, you said a while ago that you first deducted the two per cent for gathering the oil produced in West Virginia and then you made a further deduction when that oil was consigned to a point without the State of West Virginia, or that quantity of oil, and that you deducted the one per cent insofar as the consignor was concerned on your books, retained your proportion of the oil and forwarded the

proportion of the oil that would go to the next carrier, or the next connecting carriers. Now what I want to ascertain, is, if this rate, the I. C. C. rate from wherever the oil originated on a tender to the point of destination, applied to the one per cent of the oil transported?

A. Yes sir.

Q. In other words you charge for transporting the one per cent as well for the quantity of oil that stands on your books to the credit of the consignor, is that not true?

A. Yes sir.

Q. On yesterday you stated that your company under the two per cent deduction for evaporation and waste received in all approximately 125,000 barrels, or in round numbers about $500,000 worth of oil during the period we are referring to. What becomes of
777 that physical oil?

A. You cannot tell what becomes of the physical oil. It goes on.

Q. What becomes of that quantity of oil?

A. Most of it is lost with handling and evaporation.

Q. How is it lost except by evaporation?

A. I don't know as I can answer that question. I am not prepared to answer that question. I cannot tell.

Q. From whose department in your company could that information be obtained?

A. I presume that could be answered by the party that thoroughly understands the running of the oil. He can answer that more intelligently that I could.

Q. In whose department?

A. I presume Mr. Towl could answer that.

Q. You mean Mr. Forrest M. Towl, President of the Company?

A. Yes.

Q. Who is here?

A. Yes.

Q. At this hearing?

A. Yes sir.

Q. Does your company ever sell any oil?

A. We have not during that period.

Q. Have you in any year ever sold any physical oil under
778 the two per cent for evaporation and waste?

A. We have not sold any physical oil.

A. Or any oil?

A. We sold a balance.

Q. When did you last sell a balance?

A. I cannot quite recall, probably three or four years ago. I am not certain.

Q. Do you remember whether that balance was considerable or small?

A. It was I think 125,000 barrels.

Q. For what period? The balance was for what period?

A. It did not cover any period.

Q. When have you sold oil last prior to that time?

A. I could not recall.

Q. Can you state whether or not you have a balance on hand at this time that was received under the two per cent deduction for evaporation and waste?

A. We have a balance in our "over and short account." You cannot pick out where it came from.

Q. I understand. How much does that amount to at this time?

A. Of Pennsylvania grade oil you are talking about?

Q. Yes.

A. About 50,000 barrels.

Q. And that is worth how much per barrel at the present market?

779 A. $4.50.

Q. Part of that balance was on hand for the period ending June 30, 1919, was it not?

A. Yes sir. That was the balance I referred to on that period when I gave you these last figures.

Q. Then you did have a balance for the twelve months ending June 30, 1919?

A. A balance in our "over and short account."

Q. That was received from the handling of oil under this two per cent and one per cent?

A. During all of the periods. You cannot tell where it came from.

Q. What do you mean by "during all of the periods, you cannot tell," et cetera?

A. It of course must have been received from the two per cent. or the one per cent. at some time.

Q. Do your books show a balance for each year?

A. Yes sir.

Q. Then by looking at your books you could furnish us the information of what was your balance for the twelve months ending June 30, 1918, and also your balance for the twelve months ending June 30, 1919, could you not?

A. Yes sir.

Q. And if there was an increase for the period ending

780 June 30, 1919, over that for the period ending June 30, 1918, you would know how much of that balance was acquired during the period ending June 30, 1919, would you not?

A. From one source or another.

Q. Please answer the question by yes or no and then you can describe by one source or another. You keep your balance from the different grades of oil separately, do you not?

A. Yes sir.

Q. Then you could show by your books just what your balance was in the different grades of oil handled by your company, could you not?

A. Yes sir.

Q. In that way?

A. Yes sir.

Q. In furnishing me the information requested on yesterday I

wish you would furnish that information as to your balance on June 30, 1918, and your balance on June 30, 1919?

A. Yes sir.

Q. And your balance for the period since June 30, 1919 to December 1st, 1919?

A. Yes sir.

Q. What distance in West Virginia does your company transport Mid-Continent oil?

781 A. About twenty-five miles when it is handled via the Southern Pipe Line Company, and about fifteen approximately when it is handled to the Pure Oil Pipe Line Company.

Q. Explain how it is only handled fifteen miles when you deliver to the Pure Oil Pipe Line Company?

A. The delivery to the Pure Oil Pipe Line Company is delivered to them at or near Morgantown, and that approximately is only about fifteen miles. The other delivery goes to Morgantown and from there to the Southern Pipe Line Company.

Q. About what distance do you handle the Corning grade of oil, or transport the Corning grade of oil?

A. I should judge 100 miles.

Q. I believe you told us on yesterday what distance you transported the Somerset oil.

A. Approximately I think I did, I know I did.

Q. Has your company ever made any request of the Interstate Commerce Commission, or have you ever, for increase of rates?

Mr. Crawford: If the witness knows.

Q. If you know?

A. No, I do not know.

Q. Who would know that?

A. Mr. Forrest M. Towl.

Q. Has your company ever filed a tariff with the Interstate Commerce Commission in connection with any other carrier, or

782 has any other carrier ever filed in connection with you such tariff with the Interstate Commerce Commission which the Interstate Commerce Commission has refused to allow to be issued and become effective?

Mr. Crawford: I object to that as immaterial and irrelevant and not pertinent to the issues of this case and not the best evidence and calling for the contents of written documents.

Mr. Avis: No, it does not call for any contents of a written document. It calls for a mere fact.

A. Not that I am aware of.

Q. Plaintiff's Exhibit 4 shows 16,015,736.04 barrels of oil produced outside of West Virginia handled by your company and delivered to other carriers on I. C. C. tariffs, does it not?

A. Yes sir.

Q. Is that number of barrels the amount received by your com-

pany or is it the number of barrels delivered after deducting your proportion of the one per cent?

A. It is the amount of barrels delivered after deducting our portion of the one per cent.

Q. Mr. Swisher, will you now take Plaintiff's Exhibit number 43. This statement does not pretend to cover all of the Pennsylvania grade of oil that was transported by your company on I. C. C. tariff, does it?

783 A. It does not include all the receipts from other pipe line companies.

Q. You show therein the number of barrels of oil which was transported and delivered to other carriers from Bula, Core, Bell, Murray, and Scott. I will now ask you this: on yesterday you testified as to the respective distances such oil from those places was transported, did you not?

A. Yes sir.

Q. As to the 3,600,000 odd barrels in round numbers, of Pennsylvania grade oil transported from Morgantown, what distance was that oil transported?

A. The distance from Morgantown to the state line would be about twelve miles approximately.

Q. That is also true as to the Cabell oil that is transported from Morgantown? The same distance would apply to the Cabell oil?

A. Yes sir.

Q. What distance was the oil that originated at Cabin Creek as shown on this exhibit transported by your company?

A. Approximately 170 miles.

Q. As to the oil transported from Downs as shown on this exhibit number 43, about how far was that transported?

A. About ten miles.

Q. And as to the oil transported from Brice, about what

784 distance?

A. About two miles.

Q. And as to the oil transported from Jakes Run, about what distance?

A. About four miles.

Q. And as to that transported from Littleton, about what distance?

A. About a mile.

Q. I wish you would turn to the first item of 7,496.60 barrels of Cabell oil. There was no Cabell oil transported from Morgantown at all, was there? That is actual Cabell oil?

A. Yes sir.

Q. Wasn't it a combination of Cabell-Somerset oil?

A. Well, it was what we call in Cabell oil a balance that was transported.

Q. It was the mixture of the Cabell oil produced in Cabell County, West Virginia with the Somerset oil, the greater amount of which was produced in Kentucky and the small quantity produced in Wayne County, West Virginia, was it not?

A. It was transported out as Cabell oil on our books.

Q. I am not asking you that. I am asking you whether it was Cabell oil. You heard Mr. Kenney's testimony, did you not?

A. It was according to Mr. Kenney's testimony,—it was transported out as Cabell oil.

785 Q. Don't you recall Mr. Kenney to say in his testimony that the Somerset oil and Cabell oil were mixed together and not kept separate at any time? Don't you recall his testimony?

A. Something to that effect I believe.

Q. And if that be true it went out from Morgantown as Cabell oil, but it was really a mixture of Cabell-Somerset oil, was it not?

A. That must have been the case.

Q. The Cabell oil referred to in that amount moved from the point of production to Morgantown on your twenty cents gathering charge during the period that we are referring to, did it not?

A. Yes sir.

Q. And was not tendered for shipment except at Morgantown, West Virginia, was it?

A. It was tendered for shipment from Morgantown.

Q. And delivery was made of the mixture of the Cabell oil with that of the Somerset as you have stated, was it not, so carried on your books as Cabell oil?

A. As far as I personally know, it was Cabell oil.

Q. You do not mean to say that it was Cabell oil, do you?

A. Except from what Mr. Kenney testified, it was Cabell oil to us. It was Cabell oil on our books, and I don't know otherwise.

786 Q. It may have been such mixture as Mr. Kenney testified was had between it and Somerset oil that you make delivery of, is that not true?

A. Yes.

Q. I note that at the bottom of the page, Butler District, Wayne County, 1,459.51 barrels Somerset oil. The route of that oil was from your lines to a point connecting with a line or lines of the Cumberland Pipe Line Company, was it not?

A. Yes sir.

Q. Then through their lines and back into your lines at Tug River Station of your company, was it not?

A. Yes sir.

Q. Did that move from Butler District, Wayne County, on an I. C. C. tariff?

A. Yes sir.

Q. Then that is an instance where you moved oil on a smaller tender than 75,000 barrels for outside of the state, is it not?

A. We moved that oil from Butler District around in the way described in a less amount than 75,000 barrels.

Q. Really it was moved in smaller quantities than the 1,459.51 barrels, was it not?

A. Yes sir.

Q. And it moved on a tariff or on a tender for outside of the state, did it not?

787 A. That oil is described——

Q. I don't ask for a description. I am asking you the question. It moves on a tariff or on a tender for outside of the state, did it not?

A. That oil, as explained, did not move on a tender. That was untendered oil. There will be a tender forthcoming for that, but had not been during that period.

Q. Where did that 1,459.51 barrels of oil start for?

A. It started from Morgantown.

Q. I said where did it start for,—Butler District, Wayne County?

A. Oh, where? That oil moved on an I. C. C. tariff from Butler District to Morgantown.

Q. But you moved that oil in much smaller quantities than the 1,459.51 barrels without a tender, is not that true?

A. Yes sir.

Q. And there was no tender for it until after you had moved all of it, was there?

A. There was no tender for it up to that time.

Q. In other words that covers the oil of that grade produced in Butler District, Wayne County, West Virginia, for the twelve months ending June 30, 1919, does it not?

A. It covers that much of the oil that had been gathered and moved along during that period.

788 Q. For the whole year?

A. Yes.

Q. And that was moved in very small quantities from time to time, was it not?

A. Yes sir.

Q. And you never received a tender for that oil until after it had entirely moved, did you?

A. We have not received a tender, no sir.

Q. You have not received it yet, have you?

A. No sir.

Q. So that particular quantity of oil was not only sent out of West Virginia into Kentucky and back into West Virginia, but was sent again from West Virginia outside of the state before you received a tender for it. Is that not true?

A. The physical oil probably went beyond.

Q. You did not receive tenders of shipments except from stations in West Virginia shown on your Plaintiff's Exhibit number 43, did you?

Mr. Crawford: You mean on the Eureka tariffs don't you?

Mr. Avis: I said "received" as distinguished from "noticed." The other I understand moves on tenders from other states.

789 Q. And you handle it on that notice of tender? This oil as I understand was moved on tenders made within the State of West Virginia, and my question relates to tenders within the State of Virginia?

A. No sir, those points cover our tariff points.

Q. In other words however far the oil is produced from those

stations, in West Virginia, it is run and gathered into your lines and moved forward towards those stations and is transported between the points of production in West Virginia and those stations respectively before any tender of shipment is made therefor, is that not true?

A. No, I do not think it is.

Q. Did you understand the question thoroughly?

A. Read it again, please.

(The question was repeated by the stenographer.)

A. That is the case.

Q. The 3,638.517.02 barrels of Pennsylvania grade of oil that moves from the station at Morgantown may have been produced at some point in West Virginia 170 to 175 miles away, may it not?

A. Yes sir.

Q. And some at less distance?

A. Yes sir.

Q. That is also true of all the oil that was pumped by your company appearing on Plaintiff's Exhibit number 43, is it not?

790 A. Not the distance any moves. It is impossible for some of those stations——

Q. (Interrupting.) I say, my question related to not the greater distance, but the greater distance and less distances?

A. Yes sir.

Q. And on all of that oil shown on Plaintiff's Exhibit number 43 you collected the gathering charge of twenty cents that was permited under the tariff No. 151 previously referred to in your testimony, is that not true?

A. Yes sir.

Q. The oil stated on this exhibit does not embrace any of oil that was delivered within the State of West Virginia, does it? That was produced and delivered within the State of West Virginia, does it?

A. No sir. I may have misunderstood the question previously. Did you ask me if this oil was gathered by The Eureka Pipe Line Company, in that table?

Q. Yes.

A. There was a Cabin Creek amount that was not gathered, that appears in that table. That is the only one. The amount of 269,170.27 barrels was not gathered by The Eureka Pipe Line Company.

Q. That was the oil that was shown on Plaintiff's Exhibit number 4 as having been consigned or part of it to the Pure Oil

791 Company at Marcus Hook, Pennsylvania.

A. Part of it.

Q. And to some one at Philadelphia, Pennsylvania, is that not true?

A. Yes sir.

Q. Who was that consigned to that moved on the tariff you referred to, to Philadelphia, Pennsylvania?

A. The Atlantic Refining Company.

Q. The Pennsylvania grade of oil handled, stored or transferred

by your company,—what proportion if it goes to the Standard Oil Company of New Jersey?

Mr. Crawford: I object to that question as immaterial and irrelevant, and not pertinent to the issues of the case.

Mr. Avis: In connection with that objection I desire to call attention to the fact that on yesterday counsel for the plaintiff asked as to the percentage of oil that was delivered to certain persons, and I want to ascertain as far as I can the percentage of oil that was delivered to each.

Mr. Crawford: I do not think I asked that, Mr. Avis. I asked what percentage of that amount of 3,638,000 odd on Plaintiff's Exhibit 43 was delivered on tenders of certain people, meaning the shippers. I think I am right about that.

Mr. Avis: That may have been, I am not sure.

Q. The oil that Mr. Crawford just referred to in his objection to my question is at least in part represented by the oil shown on Plaintiff's Exhibit number 43, is it not?

Mr. Crawford: I don't know what that question means, and I repeat my objection.

Mr. Avis: You just said you asked him about a particular quantity of oil. I did not get the figures, but three million and something barrels, and I am asking him if that three million and some odd barrels that you just referred to in your objection is not in part covered by the barrels of oil shown on Plaintiff's Exhibit 43, to show that I am questioning in part about the same oil at least.

Mr. Crawford: I will admit that I examined the witness as to the oil appearing on Exhibit 43, Morgantown, 3,638,517.02 barrels Pennsylvania grade oil. That is quite correct. I was talking about that.

Q. Are you able at this time to give the consignees respectively the Pensylvania grade oil that moved from Morgantown and their proportionate part of that oil in percentages or barrels?

A. I believe I could pick it out.

Q. I would like to know by whom oil shown on Plaintiff's Exhibit number 43 was shipped and the approximate amount shipped by each, and if it will take too much time to figure it out at this time I would like you to do so at a later time of this examination and furnish that information for me.

Mr. Crawford: I do not object to the substance, but I want to get it right.

Mr. Avis: Maybe I can make it a little more clear.

Mr. Crawford: You mean, don't you, as I said yesterday you want to know who were the shippers upon whose tenders the amount of oil that makes composing that total of 3,638,517.02 barrels were shipped?

Mr. Avis: No sir, not that total but all the oil shown on Plaintiff's Exhibit 43, how it was shipped, and to whom?

Mr. Crawford: Am I correct except that you do not limit it to that total but you want to apply it to the whole?

Mr. Avis: To the whole, yes sir.

Mr. Crawford: But you want to know who were the shippers upon whose books that oil or the batches composing it was or were pumped from Morgantwn?

Mr. Avis: Yes, from all the points named on that Plaintiff's Exhibit 43.

794 Mr. Crawford: The total amount being 4,638,348.19 barrels.

Mr. Avis: And the quantity tendered for shipment by whom?

Mr. Crawford: You don't mean each individual tender, I suppose? You mean the gross sum?

Mr. Avis: The gross sum of all the tenders; and if possible figure it out in percentages of the total quantity.

Mr. Crawford: Can that be furnished?

The Witness: Yes; who consigned the oil you mean?

Mr. Avis: Yes. I add this: I would prefer to have the names to whom this oil was shipped, if it could be got, and I care nothing about who were the shippers.

The Witness: Who the oil is consigned to?

Mr. Avis: Yes, I would like to have both, who shipped it and to whom it was consigned. We will leave the answer open to that question until you can supply the information.

Mr. Crawford: My objection stands of course as to any testimony concerning the consignee.

Mr. Avis: I understand.

Q. I wish you would turn to Plaintiff's Exhibit number 4, and I ask you who were the consignees of the oil that went to

795 Bayonne, New Jersey?

Mr. Crawford: I object to that question as immaterial and irrelevant and not pertinent to the issues in the case.

A. The Standard Oil Company of New Jersey.

Q. And as to the oil that went to Claremont, New Jersey, to whom was that consigned?

Mr. Crawford: I make the same objection.

A. The Standard Oil Company of New Jersey.

Q. And as to the oil appearing on that exhibit as having gone to Baltimore, Maryland, to whom was that consigned?

Mr. Crawford: I make the same objection.

A. The Standard Oil Company of New Jersey.

Q. And as to the oil that went to Philadelphia, Pennsylvania, to whom was that consigned?

Mr. Crawford: I make the same objection.

A. The Atlantic Refining Company.

Q. And as to the oil that went to Franklin, Pennsylvania, to whom was that consigned?

Mr. Crawford: I make the same objection.

A. The Atlantic Refining Company.
Q. And as to the oil that went to Olean, New York, to whom was that consigned?

Mr. Crawford: I make the same objection

796 A. Vacuum Oil Company.
Q. And as to the oil that was consigned to Bramell Point, New Jersey, as to the oil that went to Bramell Point, New Jersey, to whom was that consigned?

Mr. Crawford: I make the same objection.

A. Vacuum Oil Company.
Q. And as to the oil that went to Pittsburgh, Pennsylvania, to whom was that consigned?

Mr. Crawford: I make the same objection.

A. The Atlantic Refining Company.
Q. And as to the oil that went to sundry points in Pennsylvania, to whom was that consigned?

Mr. Crawford: I make the same objection.

A. To sundry parties, I could not say.
Q. You could not say?
A. No.
Q. Could you mention any of them?

Mr. Crawford: I make the same objection.

A. It went to several shippers or several refineries in the South West Pennsylvania Pipe Lines. One would be the Freedom Oil Works Company; the Vulcan Oil Refining Company; A. B. Miller Sons Company. I beg your pardon,—do you mean to whom were these consigned?

Q. Yes. You say "sundry parties." Who were the sun-
797 dry parties if you know?

A. I would like to amend my answer to the sundry points. The South West tariff provides that the oil can go via Eureka and bring the oil back into the South West Pennsylvania Pipe Lines and there deliver to any places or any of the refineries in that district of the South West Pennsylvania Pipe Lines, therefor that oil is not consigned to anyone but goes to the several shippers in the South West.

Q. You refer to that oil shown for sundry points in Pennsylvania?
A. Yes.

Mr. Crawford: Will you ask him about the two items at the foot of the page of sheet 1?
Mr. Avis: He has already answered both of those.
Mr. White: He answered Philadelphia, but you did not ask him specifically as to the last item.
Mr. Avis: I thought I did.

Q. As to the last destination appearing on sheet 1 of Exhibit 4, "for Philadelphia, Pa., I. C. C. 149," to whom was that oil consigned?

Mr. Crawford: I make the same objection.

A. The Atlantic Refining Company.

Q. As to the oil that went to Bramell Point, New Jersey, to whom was that consigned?

798 Mr. Crawford: I make the same objection.

A. Vacuum Oil Company.

Q. As to the oil that went to Centerbridge, Pennsylvania, to whom was that consigned?

Mr. Crawford: I make the same objection.

A. Standard Oil Company of New Jersey.

Q. In response to my request you have produced through the attorney of your company the names of the officers and directors of The Eureka Pipe Line Company, the Cumberland Pipe Line Company, the South West Pennsylvania Pipe Lines and the Southern Pipe Line Company, have you not?

A. Yes sir.

Q. You are not at this time in position to furnish the names of all the officers and directors of the Buckeye Pipe Line Company and the Prairie Pipe Line Company as I understand it?

A. I have not the information at present?

Q. You are endeavoring to acquire it and furnish it at a later time during this hearing?

A. Yes sir.

Q. The information that you have furnished is contained in a paper that you have prepared or had prepared, is it not?

A. Yes sir.

Q. I will now ask you to put in with your testimony that
799 paper just referred to, marking it Defendants' Exhibit number 2.

Mr. Crawford: I object to you offering it in that form. I do not think you have a right to ask this witness to put in anything in his testimony. We produce a paper and the witness has identified it. You may offer it in evidence.

Mr. Avis: All right.

Mr. Crawford: Then I will make the objection.

Mr. Avis: All right.

Q. Who is the president of The Eureka Pipe Line Company?

Mr. Crawford: I object to that.

Mr. Avis: Can you not make one objection along the whole line?

Mr. Crawford: I do not object to the Eureka.

A. Forrest M. Towl.

Q. He is also a director of that company, is he not?

A. Yes sir.
Q. Who is the Vice-President of that company?
A. W. J. Alexander is vice president.
Q. He is also a director, is he not?
A. Yes sir.
Q. Who is the vice president and treasurer of that company?
A. E. R. Shepard.
800 Q. He is also a director of The Eureka Pipe Line Company, is he not?
A. Yes sir.
Q. He is the same Mr. E. R. Shepard that you referred to in your previous testimony as having a short time ago been the secretary of that company, is he not?
A. Yes sir.
Q. Who is the superintendent of The Eureka Pipe Line Company?
A. Mr. A. D. McVey.
Q. He is also a director of that company, is he not?
A. Yes sir.
Q. Who is the assistant superintendent of that company?
A. Mr. J. J. Kenney.
Q. He is also a director of the company?
A. Yes sir.
Q. That is the same Mr. J. J. Kenney who has previously testified in this case?
A. Yes sir.
Q. Who is the present secretary of The Eureka Pipe Line Company?
A. C. A. McLouth.
Q. Who is the general manager of the company?
A. Allan T. Towl.
801 Q. What, if any, relationship exists between him and the president of The Eureka Pipe Line Company, if you know?
A. He is a brother.
Q. Who is the president of the Cumberland Pipe Line Company?

Mr. Crawford: I object to any questions as to the officers or organization of The Eureka Pipe Line Company or any other company than The Eureka Pipe Line Company as being irrelevant, immaterial and not pertinent to the issues, and I ask that this objection be understood to apply to all questions along this line without repetition.
Mr. Avis: It is agreed that this objection without being repeated may apply to all questions along this line.

Q. The question is, who is the president of the Cumberland Pipe Line Company?
A. Forrest M. Towl.
Q. He is also a director of that company, is he not?
A. Yes sir.
Q. Who is the superintendent of that company?
A. Joseph A. Geiger.
Q. He is also a director of that company, is he not?

A. Yes sir.
Q. Who is the vice president of that company?
A. E. R. Shepard.
802 Q. He is also the treasurer of that company?
A. Yes sir.
Q. But he is not a director?
A. He is not.
Q. Who are the other directors of that company besides those whom you have mentioned?
A. Mr. J. H. Geiger is a director, and Mr. W. F. Alexander is a director, and Mr. J. M. Tussey is a director.
Q. Is Mr. J. M. Tussey also assistant secretary of the Cumberland Pipe Line Company?
A. He is.
Q. There is a Mr. Alexander. Are the initials W. F. or W. J.?
A. W. F.
Q. Is he a different Alexander from the Alexander that is vice president and director of The Eureka Pipe Line Company?
A. Yes sir.
Q. Do you know what relationship exists between the two?
A. I think he is a son. I am not sure.
Q. That is, W. F. Alexander is a son of W. J. Alexander?
A. I believe so.
Q. I believe you stated that Mr. E. R. Shepard is also treasurer of the Cumberland Pipe Line Company as well as vice president?
803 A. He is treasurer.
Q. Who is the general manager of that company?
A. Allan T. Towl.
Q. Who is the secretary of that company?
A. C. A. McLouth.
Q. Who is the solicitor or attorney of that company?
A. I don't know.
Q. Who is the solicitor or attorney of The Eureka Pipe Line Company?
A. I don't know.
Q. Didn't you state the other day that Mr. Dorworth was the solicitor?
A. I believe Mr. Dorworth is.
Q. Of both companies?
A. I think so.
Q. Who is the president of the South West Pennsylvania Pipe Lines?
A. Forrest M. Towl.
Q. Is he a director?
A. Yes sir.
Q. Who is the general shipping agent of that company?
A. V. S. Swisher.
Q. He is also a director?
A. Yes sir.
804 Q. That is you, is it not, Mr. Swisher?

A. Yes sir.

Q. When we asked for a list of the directors of your company the other day you did not mention your name as being one of the directors, did you?

A. I didn't think you asked for the South West Pennsylvania Pipe Lines. That is, I don't recall now that you did. It was not my intention not to give it.

Q. Who is the superintendent of that company?

A. Mr. T. M. Magee.

Q. Is he also a director of that company?

A. Yes sir.

Q. Who are the other directors?

A. Mr. J. S. O'Brien and T. C. Towl.

Q. What relationship exists between Mr. T. C. Towl and Mr. Forrest M. Towl?

A. He is a son of Mr. Forrest M. Towl.

Q. Who is the vice president and treasurer of that company?

A. Mr. E. R. Shepard.

Q. Who is the vice president and general manager of that company?

A. Allan T. Towl.

Q. He is a brother of Mr. Forrest M. Towl, is he not?

805 A. Yes sir.

Q. Who is the secretary of that company?

A. C. A. McLouth.

Q. Is that the same Mr. C. A. McLouth that is secretary of The Eureka Pipe Line Company?

A. Yes sir.

Q. The same Mr. C. A. McLouth who is secretary of the Cumberland Pipe Line Company, is he not?

A. Yes.

Q. Who is the solicitor or attorney of the South West Pennsylvania Pipe Lines?

A. I believe Mr. H. C. Dorworth.

Q. The same Mr. Dorworth that you have been referring to?

A. Yes sir.

Q. Who is the president of the Southern Pipe Line Company?

A. Forrest M. Towl.

Q. He is also a director of that company?

A. Yes sir.

Q. Who is the vice president and general manager of that company?

A. Mr. J. W. Vandergrift.

Q. He is also a director of that company?

A. Yes sir.

Q. Who is the secretary of that company?

A. Mr. C. A. McLouth.

806 Q. He is also a director, is he not?

A. Yes sir.

Q. Who are the other directors of that company?

A. Mr. C. E. Loane and Mr. H. C. Dorworth.

Q. Mr. Dorworth is also solicitor of that company, is he not?
A. Yes sir.
Q. Who is the vice president and secretary of that company?
A. E. R. Shepard.
Q. Wherever you have given the same name as being an officer or director of one or the other of these companies and you mentioned the same name more than once, you are referring to the same individual, are you not?
A. Yes sir.

Mr. Avis: I think we are through with the examination of this witness so that you can prepare. There may be a few omitted questions we might want to ask about and of course reserve the right to ask him about this information he is to collect at a later date?
Mr. Crawford: Certainly.
Mr. Avis: I simply state that so that you can go ahead with your questions.

Adjourned until Friday, December 5, 1919, at 10:30 A. M.

807 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et als.

New York, December 5, 1919.

Met pursuant to adjournment.

Appearances:

For the plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.
For the defendants: S. B. Avis, W. Gordon Mathews.

VERNON S. SWISHER resumed.

Cross-examination.

Continued by Mr. Avis:

Q. Mr. Swisher, in reading over your testimony of yesterday in which you referred to the balance of all that occurred in your "over and short account," I am fearful that it may have been understood by you that I was confining my questions to the Pennsylvania grade of oil when I intended to include in those questions all grades of oil; and with this explanation I desire to ask you whether you
808 were referring in your answers solely to the Pennsylvania grade oil or the balance of that grade of oil which remained in your "over and short account" in your testimony of yesterday?
A. Yes, sir, that is what I thought your question meant. It said Pennsylvania grade of oil. That is what I figured on.

Q. Then you were limiting your replies to the Pennsylvania grade of oil?

A. To the Pennsylvania grade of oil.

Q. Does your "over and short account" also show the other grades of oil handled by you?

A. Yes, sir.

Q. Namely, the Mid-Continent oil?

A. Yes, sir.

Q. And the Somerset-Cabell oil?

A. Yes, sir, the Somerset oil.

Q. And the Corning oil?

A. And the Corning oil.

Q. I believe that constitutes all the grades of oil handled by your company?

A. You said Somerset-Cabell oil. We keep a separate account for Cabell.

Q. On your books?

A. On the books.

Q. I asked you yesterday if it were not mixed with the
809 Somerset oil, or the Somerset-Cabell oil as Mr. Kenney testified, and you stated that what Mr. Kenney said in that connection was correct, did you not?

A. As far as our books are concerned, we keep that separate.

Q. But as far as actual facts are concerned, those two oils are mixed?

A. I presume so.

Q. Is any Mid-Continent oil used in West Virginia?

A. No, sir.

Q. Is any Corning oil used in West Virginia?

A. No, sir.

Q. Of your proportion of the one per cent for waste, etc., for handling Mid-Continent oil, what does your company do with that oil?

A. Why, it is held in the "over and short account" against any losses.

Q. You had actual oil?

A. There is more oil than we have to account for, and that would be in our "over and short account."

Q. What becomes of the oil itself that you hold?

A. The oil itself, it is not a physical oil. Of course it is moving all the time. There is more oil in our system than we have to account for; that is the oil in our system.

Q. Remaining there in West Virginia?

810 A. Yes, sir.

Q. That is true of the other oils that you receive on notices of tender of shipment outside of the State?

A. Yes, sir.

Mr. Crawford: What is true?

Q. Of the other grades of oil.

Mr. Crawford: What is true? I have followed your question closely, and I say that is a very ambiguous question.

Mr. Avis: It may be to you.

Mr. Mathews: The witness answered it.

Mr. Avis: He answered it without any trouble. I think the witness understood me; didn't you, Mr. Swisher, in my question?

The Witness: I would like to have you repeat it. I thought I did.

Mr. Crawford: I object to the question in form as ambiguous, and I want my objection to go in before the answer.

Mr. Avis: It may be ambiguous to counsel. I don't know whether it is to the witness or not.

Q. You understand the question, do you not, Mr. Swisher?

Mr. Crawford: That is not the question, Captain Avis. What this witness may think is clear is one thing. When it gets before the Court, if it is an ambiguous question, his answer may convey an utterly erroneous impression.

811 Mr. Avis: It may be ambiguous to you. It is not to me and may not be to the Court.

Mr. Crawford: It may be.

Mr. Avis: It does not seem to be to the witness.

Mr. Crawford: I have objected to it.

Q. Please answer the question.

A. I understand by the question that what is meant is, that we have more oil in our system *that* our liabilities call for?

Q. Yes, of the other grades of oil as well as the Mid-Continent?

A. Of the other grades of oil as well as the Mid-Continent, yes, sir, with possibly one exception at the period mentioned.

Q. You mean during the period mentioned?

A. During the period mentioned.

Q. What exception is that?

A. Somerset oil.

Q. Suppose that you are making a run of Mid-Continent oil, which you say that you only handle from the West Virginia-Pennsylvania boundary line where the line of the Eureka connects with that of the South West Pennsylvania Pipe Lines to Morgantown, and then from Morgantown to the point of connection with the lines of your company, with those of the Southern Pipe Line Company, what becomes of your pro rata of the Mid-Continent oil that goes

812 through those lines, if you have a surplus of it as you have described?

A. Well, it is either in the tanks or the pipes. It is in the system.

Q. For your fiscal year ending December 31, 1918, or for the twelve months ending June 30, 1919, what was the balance in your "over and short account" of Mid-Continent oil standing on the books of your company?

A. I cannot recall. I haven't the figures with me.

Q. Can you give us your balance of Corning oil for the same period?

A. I cannot recall that either.

Q. Can you give us the balance or the status or standing of the Somerset oil from that account?

A. I think the Somerset oil was just about a couple of thousand barrels less than what we should account for.

Q. When did you last sell any Somerset oil that was acquired under the one per cent?

A. We never sold any Somerset oil.

Q. You never sold any?

A. No.

Q. When did you last sell any Mid-Continent oil?

A. We never sold any Mid-Continent oil.

Q. When did you last sell any Corning oil?

813 A. I think we sold some Corning oil three or four years ago, but we had bought some Corning oil just about that time, about the same amount to my recollection.

Q. Then your company does buy and sell oil, does it not?

A. We reduce liabilities.

Q. Please answer the question by yes or no. If you want to explain it you can do so, but I am entitled to an answer. I ask that the question be repeated to the witness.

"Q. Then your company does buy and sell oil, does it not?"

A. We do I believe. We do for our "over and short account" to make good.

Q. You buy to make good and sell for gain, do you not?

A. No, sir, we buy just to make good our "over and short account."

Q. I understand you buy to make good your short account, but when you sell you sell because you have that oil on hand, do you not, an over account of it? That is not a very good expression, but you have a balance?

A. We have a balance.

Q. In furnishing the information that I requested yesterday in this connection concerning the balance or balances in your "over and short account" of Pennsylvania grade oil, I desire the same information and for the same period for the other grades of oil,

814 namely, Corning, Somerset-Cabell and Mid-Continent?

A. Yes, sir.

Q. Does your company ever handle any oil or ever transport any oil except in columns of oil, that is one column of oil following another?

A. I don't know as I understand the question.

Q. May be it is not clear. As I have understood from your testimony and that of Mr. Kenney, if you have Mid-Continent oil in your system and desire to move Corning oil in the same pipes into and out of the same tanks, that you follow that column of Mid-Continent oil with a column of Corning oil, and then follow the column of Corning oil with a column we will say of Somerset-Cabell oil. Now I am asking you if you ever move oil through your pipe line system in any other way?

A. I am not familiar with that end of the business.

Q. Well, can you follow a column of oil with a column of water?

A. I am not familiar with the handling of the running of the oil.

Q. You don't know whether that is ever done in that way or not, do you?

A. I do not.

Mr. Avis: I understand that you are not prepared yet to give us the names of the officers and directors of the Buckeye Pipe
815 Line Company nor of the Prairie Pipe Line Company?

Mr. Crawford: I will furnish you a list of the officers of the Buckeye Pipe Line Company (handing paper to counsel). If you will offer those, I don't object to them except as immaterial and irrelevant, and it will shorten matters if you have the witness identify it and offer it in evidence. The Prairie is not ready yet. We are not in position to furnish the information as to the Prairie.

Q. Mr. Swisher, are you prepared to furnish this morning a list of the officers and directors of the Buckeye Pipe Line Company?

A. Yes, sir.

Q. I will hand you a list which I will ask to have marked for identification Defendants' Exhibit 2 and ask you if this list contains the names of the officers and directors of the Buckeye Pipe Line Company (handing paper to witness)?

A. It does.

Q. I will ask you now to put in evidence that statement.

Mr. Crawford: I object to that, and I instruct the witness not to comply with it. You have no right to ask this witness to put in evidene something for your case. We have produced this in connection with your demand and the witness has identified it.

Mr. Avis: There is a clear misunderstanding on my part.
816 I did not have any idea of offering it that way, but I thought you did not object to the paper going in evidence, but you objected to its competency.

Mr. Crawford: I said if you would offer it I would only object to it as immaterial and irrelevant, but it certainly is not going in now.

Mr. Avis: I would rather it would not go in as a paper in that way.

Mr. Crawford: It is not going in as our exhibit.

Mr. Avis: It is going in as a part of your evidence on cross examination just the same. If we cannot get it in in this way I know how to put it in.

Q. Who is the president of the Buckeye Pipe Line Company?

Mr. Crawford: I object to the question and all other questions relating to the officers and organization of the Buckeye Pipe Line Company as immaterial and irrelevant and not pertinent to the issues of this case; and I suppose it may be understood that this objection may apply to all questions along this line of cross examination without repetition?

Mr. Avis: It may be so understood.

Q. Who is the president of the Buckeye Pipe Line Company?
A. D. S. Bushnell.
Q. Who is the vice president?
A. O. S. June.
817 Q. Who is the secretary?
A. George Chesebro.
Q. Who is the treasurer?
A. W. F. Livingston.
Q. Who is the oil traffic manager?
A. E. M. Welsh.
Q. Who constitutes the board of directors?
A. D. S. Bushnell, O. S. June, T. B. Greene, R. L. Bates, G. E. Pifer.

Mr. Avis: You may take the witness.

Redirect examination.

By Mr. Crawford:

Q. Mr. Swisher, you have been interrogated at length in regard to the deduction of two per cent of oil from the amount received from producers into your lines in accordance with the tariff regulations. Do you know what I am referring to?
A. Yes, sir.
Q. That I understand you is made on account of evaporation and waste?
A. Yes, sir.
Q. I understood you to testify that when oil is received from the producer he is credited on your production books with 98 per cent in bulk of what is pumped into your lines, is that your testimony?
818 A. Yes, sir.
Q. When does the loss by evaporation and waste begin and over what period does it extend?

Mr. Avis: We object on the ground that the witness has not testified that an actual loss occurred. It has not been so shown.
Mr. Crawford: I withdraw the question.

Q. This oil that you received into your pipes is transported from your gathering lines and from various branch lines into your main system, is it not?
A. Yes, sir.
Q. And the provision for the deduction of this 2 per cent is intended to cover loss by evaporation and waste, if any, from the time it is received into your pipes until when?

Mr. Avis: I object to that question because the witness has testified that he had nothing to do with the making of that tariff, nor knew the intent thereof, and further that he could not give the elements or a definition of what consti-uted waste.

A. I don't know, Mr. Crawford.

Q. In fact, the oil is moved as I have stated from the producers, as well as through gathering lines and branch lines into your main line and so on through the State of West Virginia, and except for so much of it as you delivered to the refineries mentioned, it goes on to Morgantown and so on out of the State does it not?

819 A. Yes, sir.

Q. You were questioned at length in regard to the percentages of oil shown upon Plaintiff's Exhibit 4, and I did not entirely understand your answer and I want to see whether I understand them now. Please look at Plaintiff's Exhibit 4 and take the first group of items on sheet 1 aggregating 1,239,099.55 barrels. What percentage of the total oil received by you and corresponding to those items is represented in that figure?

A. 98 per cent.

Q. Take the next group of items which constitutes the oil produced in West Virginia and delivered there to the Pure Oil Pipe Line Company, I think you testified, or the West Virginia Pipe Line Company, what percentage of oil corresponding to those deliveries do those figures represent?

A. 98 per cent.

Q. You testified as I understand that before delivering oil to a connecting carrier you deducted one per cent of the amount and delivered what remained plus all the one per cent except that proportion, is that correct?

A. Yes, sir.

Mr. Avis: I would like to ask, Mr. Crawford, if he is referring now to the item of 4,368,718.41 barrels appearing on sheet 1

820 Mr. Crawford: I will confine my question to the amount of oil which is represented by that item of 4,368,718.41 barrels.

Mr. Avis: All right.

Q. Your answer is yes?

A. Yes, sir.

Q. What percentage of the total amount that you received corresponding to the deliveries which are included in this item of 4,368,718.41 does that amount represent? In other words, what percentage of that oil that you delivered under that head, rather what percentage or amount that you received corresponding to these deliveries is represented by 4,368,718.41?

A. 97 and a fraction.

Q. Is this a correct statement, that it is 98 per cent of what you receive less your proportion of the 1 per cent?

A. Yes, sir.

Q. As to the next group of items aggregating 16,015,736.04, which constitutes the oil produced outside of West Virginia and delivered to other carriers on I. C. C. tariff as you have testified, I understand there is no deduction corresponding to the 2 per cent that you have testified to?

A. There is not.

Q. But there is a deduction of some portion of the one per cent of it, is that not so?

A. Yes, sir.

821 Q. Does this 16,015,736.04 represent 100 per cent of what you received on that group of items less your proportion of the one per cent deducted under the tariff on which the oil was moved?

A. Yes, sir.

Q. It would be between 99 and 100 per cent somewhere?

A. Yes, sir.

Q. Take the last items on that page under the heading of "Oil Produced in West Virginia (but not run by the Eureka Pipe Line Co.) and delivered to other carriers on I. C. C. tariffs", aggregating 269,170.27, what percentage of the amount which your company received is represented by those figures?

A. 99 and a fraction per cent.

Q. In other words there was no two per cent deduction on those?

A. There was not.

Q. And it is 100 per cent less the proportion of the one per cent that you retained?

A. Yes, sir.

Q. Take the table on the second sheet and omitting the item of 4,279.63 marked for Centerbridge, which you have testified to, and omitting for the present the item of 4,461.86 just below it, what percentage of the oil received by your company and corresponding to these items is represented in them?

822 A. 97 and a fraction per cent.

Q. Please explain how you arrive at that.

A. The two per cent has been deducted and the 98 per cent is forwarded with the exception of the Eureka's proportion of the one per cent retained.

Q. Then those items represent the total amount that you forwarded, do they?

A. Yes, sir.

Q. And that total amount was as you have stated 98 per cent of the original amount received or of the amount corresponding to these deliveries which you received less your proportion of the one per cent?

A. Yes, sir.

Q. You stated with reference to the item of 4,368,718.41 on sheet 1 of this exhibit, that represented 98 per cent of the amount received less your proportion of the one per cent?

A. Yes, sir.

Q. You therefore under that head have charged yourself with the gathering charge of 20 cents on that proportion?

A. Yes, sir.

Q. On the second sheet of the same exhibit you charged yourself with 20 cents which I understand from your testimony is a gathering charge on 4,461.86 barrels. Do I understand you to

testify that was the amount of your proportion of the one
823 per cent deducted from the same oils on the deliveries to which the item of 4,368,718.41 relates?

A. Yes, sir.

Q. By charging yourself as stated on sheet 1 with 20 cents gathering charge on 98 per cent and a fraction, and by charging yourself on sheet 2 with the gathering charge on the difference between 98 per cent and this percentage represented by 4,368,718.41, you have charged yourself with a gathering charge of 20 cents on the full 98 per cent of oil which you received?

A. Yes, sir.

Mr. Avis: For my clearer understanding, Mr. Crawford, in your questions when you use the words "charge yourself" you charge yourself with what? With the revenue or what?

Mr. Crawford: As having received it. That is bookkeeping. If I receive money I charge myself with it.

Mr. Avis: I notice he "charges himself." He charges gross revenue himself. He charges gross revenue. The item of gathering charge of 20 cents, for instance, on the top of page 1 of Exhibit 4,—I do not just understand in what sense you use the words "charge yourself."

Mr. Crawford: I will ask the witness.

Q. When I speak of "charging yourself" or "charging," I don't remember just the phrase I used, the gathering charge, that
824 you received and you now acknowledge that your company received under the item on page 1, and the gathering charge of 20 cents on what was the 98 per cent of the amount of oils received corresponding to the item 4,368,718.41 less your proportion of the one per cent retained?

A. Yes, sir.

Q. And that similarly when I speak of charging yourself you understood that and your answer would have been the same?

A. These are credits to our transportation revenue.

Mr. Mathews: May I ask if you mean that was simply included in the gross revenue?

The Witness: Yes, sir.

Q. And you understood me to mean, did you not, in regard to this 4,461.86, that you rec-ived the gathering charge upon that and to use your own expression, you credited that to your gross revenue?

A. Yes, sir.

Q. Taking those two items together of 4,368,718.41 and 4,461.86, and the 20 cents gathering charge in connection with each, you show that you have received and have credited to your total gross revenue from transportation account the gathering charge on 98 per cent of the oil received by you and corresponding to those deliveries?

A. Yes, sir.

825 Q. You appear in the testimony as I read it this morning to have said that you charge the transportation rate,—I mean to say your division of the through rate on these I. C. C. tariffs, on

the whole of the one per cent which was deducted and part of which you retained. Did you mean so to testify?

A. No, sir.

Q. How much of that did you charge the division of the through rate on?

A. Just on the amount that was forwarded to the other carriers.

Q. And so much of it as you retained you did not charge any portion of the through rate under the I. C. C. tariffs?

A. No, sir.

Q. To make that entirely clear, the places where and the rate received on various I. C. C. tariffs and shown upon this exhibit I think are three in number. In the first place there is a group of items on sheet 1 under the heading of "Oil Produced outside of West Virginia and delivered to other carriers on I. C. C. tariffs," which you have just a moment ago testified included 100 per cent of all the oil that you received under these items—100 per cent you said less your proportion of the one per cent which you retained under the tariffs. That is correct? You said that, didn't you?

A. Yes, sir.

826 Q. And you have in fact there charged your proportion of the through rate in the column headed "Rate," not upon the 100 per cent but upon the 100 per cent less your proportion of the one per cent retained by you?

A. Yes, sir.

Q. And you have not charged it upon your proportion of that one per cent so retained?

A. No, sir.

Q. Is the same thing true of the second place where you show the receipt of a portion of the through rate? That is on the same page at the bottom, the two items aggregating $269,170.27? Is the same thing true there?

A. Yes, sir.

Q. That is to say that you have charged there your portion of the through rate on 100 per cent of the oil you received less your portion of the one per cent retained by you?

A. Yes, sir.

Q. And you have not charged anything for the one per cent? That is in this instance you have not charged anything for that portion of the one per cent?

A. No.

Q. Because it appears there was no gathering charge there?

A. No, sir.

827 Q. Take the third group of items under this heading, which is in the table on the second page, and do you say the same thing is true, that those charges for what was your charge of the through rate do not include any charge on the portion of the one per cent which you retained?

A. You say the third group on page 2?

Q. The only group there on page 2, the third group in all. I mean the main table on sheet 2, beginning "For Claremont, N. J."

A. That is true with that also.

Q. The reason you did not charge any through rate on the portion of the one per cent that you retained where you did retain it is that you did not deliver it, is that it?

A. Yes, sir, you do not pump it. That is in the same sense as delivery.

Q. You did not turn it over to a connecting carrier, did you?

A. We did not turn it over to a connecting carrier.

Mr. Avis: In that connection I understood the witness to say yesterday that two per cent had been deducted and retained, and also if the additional one per cent had been deducted and retained, it would go forward as 98 per cent, and that he did collect the full rate, however, on the 98 per cent.

Mr. Crawford: He has corrected that, Captain Avis, I am sure. I have been over that with very great detail.

828 Mr.. Avis: I understand it does not appear as a correction. It appears as different testimony. That is the reason I am confused about it.

Q. If you said yesterday that you collected the through transportation rate on the whole of the one per cent which was deducted under the tariffs, that was a mistake, was it not?

A. That was a mistake.

Q. I show you Plaintiff's Exhibit 43. I understand that all those figures relate to oil produced in West Virginia and moved on tenders made to the Eureka Pipe Line Company, is that correct?

A. Yes, sir.

Mr. Avis: I object to the question because the witness has heretofore stated that that oil moved to those stations from the point of production, first not on I. C. C. tariffs, and then moved from the stations named on this exhibit on I. C. C. tariffs, while the question is so comprehensive as to include all movement of that oil; and the question is leading.

Mr. Crawford: I am summing up what I supposed to be his testimony. If I am wrong in the summing up I can be corrected.

Mr. Avis: Does the witness stand on his answer?

Q. At any rate, Mr. Swisher, all the oil shown on this Exhibit 43 is oil that was tendered on Eureka tariffs?

A. Yes, sir.

829 Q. I asked you on your direct examination in regard to shippers or consigners of oil making up that 3,638,517.02 barrels of Pennsylvania grade oil, and also 7,496.60 barrels of Cabell oil, both from Morgantown, and I mean to say who were the persons who delivered to your company the tenders making up that amount of oil from that point? You gave me a general answer. Have you since looked up the matter and can you now answer more specifically?

A. Yes, sir.

Q. I show you a statement and ask you what that is (handing paper to witness)?

A. This shows Tenders of shipment of Pennsylvania Grade Oil, produced in West Virginia, from Morgantown, West Virginia, to Eastern points, on I. C. C. Tariffs, between July 1, 1918 and June 30, 1919, and included in the amounts shown on Plaintiff's Exhibit 43, and itemized as follows:

7,496.60 barrels Cable Oil, and
3,638,517.02 barrels Pennsylvania Grade Oil.

3,646,013.62

These amounts were tendered as follows:

South Penn Oil Co. tenders	2,942,915.42
Carter Oil Co. "	401,772.44
Hope Natural Gas Co.	301,325.76
Total	3,646,013.62

830 Q. You stated, because the memorandum I handed you so states I suppose, that these were all tenders or shipments of Pennsylvania grade oil. That was not quite accurate, was it?

A. There is a small amount of Cabell oil.

Q. Then you mean to say that these are tenders of shipments of Pennsylvania grade oil and a small amount of Cabell oil?

A. Yes.

Q. As you have stated?

A. Yes, sir.

Q. In regard to the officers and directors of the Eureka Pipe Line Company concerning whom you were interrogated, I have a note that you testified in one instance that Mr. Macklin was a director, and that later your list did not include him. What is the fact about that?

A. Mr. Macklin had been a director but at the last election some-one else was elected in his stead.

Q. Is it a fact that he was a director during a part of the twelve months in question?

A. I believe so.

Q. The first part, is it not? The first six months or something like that?

A. Yes, sir.

Q. And then he was not re-elected and some one else succeeded him. That is correct, is it?

1 A. Yes, sir.

Q. Mr. Swisher, at page 633 of the minutes of testimony, you appear to have testified as follows:

"Q. Well, now, was it understood in advance that there was to be a stopover at Centerbridge, Pennsylvania?

"A. Yes, sir.

"Q. Do you handle any oil that is delivered to you by any other carrier in the State of West Virginia, that has a stopover privilege in the State of West Virginia?

"A. No, sir.

"Q. In other words, during the period mentioned, you received no oil from any other company connecting with your lines, that had a stopover privilege in West Virginia?

"A. We did not."

Did you intend by that answer to testify that there was oil received from some carrier or some company that had a stopover privilege in West Virginia?

A. No, sir.

Q. Is it a fact that during the period we are talking about you transported any oil whatsoever that had a stopover privilege? I mean to say, any oil, any I. C. C. tariffs had a stopover privilege in the State of West Virginia?

A. We did not.

Q. Is the same thing true since that time?

832 A. Yes, sir.

Q. In regard to the two per cent deduction that you have testified to as made for evaporation and waste, does that apply to any Somerset oil which you transport?

A. Not from the Cumberland Pipe Line Company; that is, not that is gathered by the Cumberland Pipe Line Company.

Q. Confining your answer to the twelve months in question, state what if any part of the Somerset oil transported by your company was subject to the two per cent deduction?

A. There is none of it.

Q. None of it?

A. No, none of it.

Q. What was the fact about oil that you received from the Buckeye Pipe Line Company? Was there any deduction made by you of a two per cent charge?

A. There was not.

Q. Or of any charge except that proportion of the one per cent that has been spoken of?

A. There was not.

Q. And was the same thing true of oil that you received from the South West Pennsylvania Pipe Lines?

A. Yes, sir.

Q. And in general was it true that the two per cent deduction related only to oil which was gathered by you in the State of

833 West Virginia?

A. That is true.

Q. Counsel has called my attention to the item appearing on Exhibit 43 at the bottom, Butler District, Wayne County, 1459.51 barrels of Somerset oil. I ask you whether upon that amount, which you testified was gathered by your company I think within the State of West Virginia, there was a two per cent deduction?

A. Yes, sir, that is subject to the two per cent deduction.

Q. Then you would correct your former answer to that extent?

A. I thought my former answer only related to the amount shown on this table. That does not show on that table.

Q. It shows it on the bottom, doesn't it?
A. I mean on this other table.
Q. No, I am speaking about Exhibit No. 43?
A. Yes, the two per cent is deducted.
Q. Not as shown on Plaintiff's Exhibit 4, you mean?
A. Yes, it is not shown on Plaintiff's Exhibit 4.
Q. I show you Plaintiff's Exhibits 20, 21, 22, 23, 24, 29, 30, and 31, being I. C. C. tariffs filed by the Eureka Pipe Line Company jointly with other carriers and numbered respectively 149, 156, 154, 138, 143, 135, 134, and 142, and ask you to examine these with special reference to the second regulation appearing on the
834 back of each one of them in which is mentioned 75,000 barrels. That regulation reads on Plaintiff's Exhibit 31, I. C. C. No. 142 and I think on all the others, as follows:

"When the oil shipped hereunder, in conjunction with other oil of the same kind and quality, from any other points and consigned to the same destination, shall in the aggregate amount to at least 75,000 barrels, then such aggregate amount will be forwarded to destination."

I ask you now whether that limitation of 75,000 barrels is not a limitation as to the amount which will be shipped under the tariffs in question?

Mr. Avis: We object to the question, first on the ground it is leading, secondly on the ground that counsel in propounding the question has repeatedly stated that the witness knows nothing about these regulations or had anything to do with the making of them, and is therefore incompetent to testify concerning them and calls for a legal construction.

Mr. Crawford: I will stand by the question.

A. That is my understanding.
Q. And has that anything to do with the amount of a tender?

Mr. Avis: I make the same objection.

A. No, sir, not as I understand it.
Q. And irrespective of the construction of the regulation, does your company or did your company during the twelve months
835 in question in practice apply the 75 thousand barrel limitation to tenders?

Mr. Avis: I make the same objection.

A. No, sir.
Q. What did they apply it to?

Mr. Avis: I make the same objection.

A. To the amount of oil we moved.
Q. What is commonly meant by the word "batch"? Referred to as "batch."

—. ——.

Q. In other words, the practice was, was it, that the limitation of 75,000 barrels was a limitation on the batch of oil, the amount or batch of oil, or the amount or quantity of oil to be moved at one time?

Mr. Avis: I make the same objection.

A. Yes, sir.

Q. And did not in practice have any application to the amounts of the tenders?

Mr. Avis: I make the same objection.

A. No, sir.

Q. Is the same thing true of other I. C. C. tariffs filed by your company in conjunction with other carriers, where other amounts are mentioned among the regulations? That is, without now asking you to state the meaning of the regulation, I ask you whether in the practice of your company during the twelve months in ques-
836 tion the limitation, whatever it was, related in practice, I mean in actual operation to the amount of oil which was to be moved at one time from the point or points named in the tariffs, and not to the amount of the tender? And I call your attention particularly to tariff I. C. C. No. 158, marked Plaintiff's Exhibit 19, where the amount named in regulation 2 is 50,000 barrels from Cabin Creek Station; and also I. C. C. No. 145, marked Plaintiff's Exhibit 27, where the amount named in the corresponding regulation is 25,000 barrels at Bear Creek; and I. C. C. No. 146 marked Plaintiff's Exhibit 38, in which the amount in the corresponding regulation is 25,000 barrels at Bear Creek; and two other tariffs, I. C. C. No. 144 and I. C. C. No. 148, marked respectively Plaintiff's Exhibits 25 and 26, in each of which the amount named in the corresponding regulation is 1,000 barrels at Ewings?

Mr. Avis: I make the same objection.

A. The practice was the same.

Q. In all cases?

A. In all cases.

Q. I mean, in all cases covered by my question?

A. Yes, sir, in each of the cases.

Q. The practice was the same during that period?

A. It was the same during that period.

Q. In regard to the division of the through rate on the
837 various I. C. C. tariffs under which the Eureka Pipe Line Company transports oil, and according to which it receives a certain proportion of the through rate, is the division of rates made according to any rule if you know?

A. Yes, sir.

Q. It is not an arbitrary division then?

Mr. Avis: We object to the question as leading and suggestive of the answer.

Mr. Crawford: I will withdraw the question.

Mr. Avis: And because the witness testified that he didn't know how they were arrived at.

Q. Reference was made to the Northern Pipe Line Company in your testimony or in some part of your cross-examination. I hand you Plaintiff's Exhibit 32, first map, and ask you to state again at what point in the State of New York the Northern Pipe Line Company ends? I mean at what point in the State of New York the line of the Northern Pipe Line Company ends?

A. It ends at the State line a short distance south of Olean.

Q. You mean the State line between Pennsylvania and New York?

A. Yes.

Mr. Avis: We object to the question as being improper and immaterial.

838 Mr. Crawford: You brought it out yourself. I am cross examining on your questions.

Q. And it there connects with what?

A. The New York Transit Company Lines.

Mr. Avis: I wish to make the same objection to that question.

Q. And how do they go from there?

Mr. Avis: I make the same objection.

A. The New York Transit Company Lines have a line nearly to Buffalo, through Olean from the Pennsylvania State Line, east from Olean through the States of New York and New Jersey to Bayonne.

Q. Then is it a fact that the Northern Pipe Line Company has an eastern connection through to the seaboard?

Mr. Avis: I make the same objection.

A. Yes, sir.

Q. Does the pipe line system of the South West Pennsylvania Pipe Lines connect with the system of the Tuscaroa Oil Company?

Mr. Avis: I make the same objection.

A. Yes, sir.

Q. I show you Plaintiff's Exhibit No. 32, first map, and ask you to state at what point?

Mr. Crawford: I want to say upon the record that on cross-examination of this witness he was asked about the connection be-
839 tween the South West Pennsylvania Pipe Lines and other lines, including the Crescent. He was asked those questions by counsel for the State of West Virginia, and I am re-directing on that point.

Mr. Avis: I am of the impression that the witness made some answers that were not responsive to the questions that were propounded to him. I don't recall examining him as to all the matters you are re-directing about.

Mr. Crawford: I press the question.

A. At Cooks Ferry, Pennsylvania; from there to Negley, Ohio; that is, from Cooks Ferry to Negley, the Tuscarora have a short stretch of line.

Q. You were asked some questions as to the capacity of the lines of the Eureka Pipe Line Company and you answered, if my notes are correct, about 170,000 barrels, did you not?

A. Yes, sir.

Q. To what were you then referring, to what part of their system?

A. To the trunk line part of their system.

Q. You did not include in that answer the gathering lines?

A. No, sir.

Q. Nor the tanks?

A. Nor the tanks.

Q. You testified on your cross-examination as to certain
840 amounts of Somerset oil which I think you said you received from the Cumberland Pipe Line Company in advance of receiving tenders of that oil. Did I so understand you?

A. Yes, sir.

Q. And that was during the twelve months that we have been considering here, was it not?

A. Yes, sir.

Q. What became of the physical oil that was so received if you know?

Mr. Avis: "So received" when?

Mr. Crawford: Yes.

Mr. Avis: I object to the question because I understood the testimony of the witness to be that that oil originated with his company, and it was delivered over to the Cumberland Pipe Line Company and then came back into the State.

Mr. Crawford: I am not talking about that, Mr. Avis, about that quantity of oil at all.

Q. On page 602 of these minutes you testified:

"Q. Now, do you get a storage on oil not produced in West Virginia?

"A. There was a so-called storage charge went into the storage revenue on account of oil received from the Cumberland Pipe Line Company. It is between the pipe lines the charge was made.

841 "Q. For storage in West Virginia?

"A. For storage of oil that had been received by the Cumberland Pipe Line Company untendered."

842 And a little later, but on the same subject, at page 603, you testified:

"Q. How much did that charge amount to?

A. It amounted to in the neighborhood of about $5,000."

I am referring to the oil to which you referred when you so testified. My question is, first, what became of the physical oil which you referred to in that testimony during the twelve months in question?

A. The physical oil kept moving along in the regular stream.
Q. Right on to Morgantown and out of the State?
A. Yes, sir.
Q. Just as has been testified to by Mr. Kenney and by you heretofore?
A. Yes, sir.
Q. I show you a table of figures and ask you to state what it is generally without going into detail (handing paper to witness)?
A. Somerset oil handled by the Eureka Pipe Line Company, showing the amount received——
Q. During what period?
A. During the twelve months ending June, 1919.
Q. And the second column shows what amount?
A. The amount received from the Cumberland Pipe Line Company.
843 Q. And the third column?
A. The amount pumped by Morgantown.
Q. Then these totals of the second column are the totals of all the Somerset oil received from the Cumberland?
A. Yes sir.
Q. And likewise all the Somerset oil pumped from Morgantown?
A. Yes.
Q. It includes, therefore, does it, the oil which you were referring to in the testimony I quoted and also oil which you received on tenders?
A. Yes, sir.

Mr. Crawford: I offer this in evidence.

Paper received in evidence and marked Plaintiff's Exhibit 44.

Q. Looking at Plaintiff's Exhibit 44, this exhibit shows, does it not, that for the twelve months in question your company received of Somerset oil from the Cumberland Pipe Line Company a total of 4,826,352.83 barrels, and pumped from Morgantown 4,655,144.32 barrels, does it not?
A. Yes, sir.
Q. And when you say "pumped from Morgantown" that is the same as the phrase you have used as "pumped through Morgantown"?
A. Yes.
Q. You mean that that amount was sent through your
844 lines to the junction with the Southern, do you not?
A. Yes, sir.
Q. It also shows that the monthly average of receipts were 402,187.74 barrels, and the amounts pumped 387,928.69 barrels, does it not?
A. Yes, sir.
Q. Making a difference of about 14,000 barrels?
A. Yes, sir.
Q. And the daily average of the amounts received 13,222.61, and

of the amount pumped 12,753.82, showing a difference of approximately 500 barrels, does it not?

A. Yes, sir.

Q. This oil that you testify was received from the Cumberland Pipe Line Company by your company and was held by your company before it was tendered, how did you handle that on your books? I mean, what entries did you make of it?

A. It was entered on the books to the credit of the Cumberland Pipe Line Company.

Q. As what you call a credit balance?

A. As a credit balance.

Q. Similar in its treatment to the credit balance as to which you have already testified?

A. Yes, sir.

Q. And then when tenders were subsequently made against this credit balance, what did you do by way of entries?

845 A. We credited the tender and charged the Cumberland Pipe Line Company.

Q. What do you mean by crediting the tender?

A. We put it to the credit of the tender, we charged out the account against that credit when the tender was issued, and put it to the credit of the shipper when the credit was issued.

Q. After the credit balance in those cases was held, or all the credit balances were held for a certain length of time, you made a charge on them, as I understand it?

A. Not in this case.

Q. Not in that case?

A. No—oh, the charge to this related to each——

Q. I didn't ask you that. I asked you whether you made a charge after a certain length of time?

A. We did.

Q. You may state what that charge was?

A. The charge was a rate of one-one-hundredths of one cent per barrel per day from the day it was untendered, every day it was untendered.

Q. You mean from the time you received it therefor?

A. Yes, sir.

Q. Until it was tendered?

A. Until it was tendered.

Q. Was that charge made by you under any tariff?

846 A. No, sir.

Q. How did it come about?

A. Mr. Towl instructed me to make the charge.

Q. You don't know why it was made?

A. No.

Q. You were asked in this same connection in relation to this very same oil, on page 602, as follows:

"Q. Well, it was in movement all the time, you mean?

"A. It was in movement, yes, sir.

"Q. But part of the time it was in tanks too, was it not, in West Virginia?

"A. For the time being it would be in tanks, and then move along.

"Q. Yes. It would start at the Tug River Station and be placed in a tank of your company there, or tanks, would it not?

"A. Until it could be pumped."

And then a little later:

"Q. But on its route it would stop several times in tanks, would it not?

"A. Oh, undoubtedly.

"Q. At different stations?

"A. Yes."

What kind of stoppage did you refer to in so testifying? I mean for what purpose was the stoppage, what was the reason for the stoppage, what you had in mind?

A. I am not familiar with that part of the business. I can tell you what I referred to, this being a necessary stoppage in order to move it along. That is all I know about it.

847 Mr. Avis: I move to strike out the answer of the witness on the ground that the witness was not familiar with it, and his answer clearly shows that. He is expressing an opinion concerning a matter of which he has no knowledge.

Q. In testifying as you did, did you intend to refer to any other stoppage than that in the ordinary course of transportation?

Mr. Avis: We object to the question on the same grounds that we made a motion to strike out the last answer of the witness.

A. No, I did not.

Q. You referred to a small amount of so-called storage charge amounting to $10 which you received on some Pennsylvania grade oil from the South West Pennsylvania Pipe Lines. Will you explain the circumstances of that?

A. It was similar to this movement. The oil was received from the South West Pennsylvania Pipe Lines before a tender was issued.

Q. What became of the physical oil?

A. The physical oil kept moving along with the other stream of oil.

Q. And until you received a tender how did you carry the oil on your books?

848 A. Until we received the tender the South West Pennsylvania Pipe Lines were credited on the books of the Eureka Pipe Line Company.

Q. And when a tender was received——

A. When a tender was received the shipper was credited and the South West Pennsylvania Pipe Lines were debited.

Q. And this amount of $10, or whatever it was which you charged, was that charged under any tariff?

A. No, sir.

Q. Why did you charge it?
A. By instructions of Mr. Towl.
Q. I am not quite sure whether you finally stated that any loss from evaporation and waste may have occurred, if it did occur, on Somerset oil while passing through your lines, was mingled with losses on Pennsylvania grade oil in your accounts or in your method of carrying on business. What is the fact about that?

Mr. Avis: I object to the question as leading and suggestive of an answer.

A. We have a separate record of the Somerset oil.
Q. And you also have a separate record of everything except the Pennsylvania grade you have stated, did you not?
A. We have a separate record of the Pennsylvania, including all grades of Pennsylvania oil from whatever source.
Q. And you have a separate record for the Corning oil?
A. Yes.
849 Q. And the Mid-Continent oil?
A. Yes, sir.

Recess until 2:30 P. M.

Afternoon Session

(Robert A. Huddleston, Notary Public, administered the oath required by law to George C. Sutton, Stenographer).

Mr. Crawford: I want to make a correction in my question on page 726 of the record, line 7. It should be made to read, "Cumberland Pipe Line Company" instead of "Eureka Pipe Line Company."
In the line following it should read, "no other company than the Eureka Pipe Line Company".

By Mr. Crawford:

Q. On page 708 of the testimony you were asked a question: "As to the oil transported from Downs as shown on this Exhibit number 43, about how far was that transported? A. About ten miles." Did you mean to say that? I show you Exhibit 43?
A. I estimated that from Downs to the Pennsylvania State line is ten miles. It may be more and probably is. It was just approximate.
Q. On page 618 there is what I judge to be an error, I don't know whether in the stenographic minutes or what. It reads as follows:

850 "Q. At what other places do you get more than one rate on handling that oil, more than the gathering charge and your proportion of the I. C. C. charge for handling the oil from Beulah?
"A. All the points named in this list (Plaintiff's Exhibit 43)."

Did you intend to testify by that that there were places from which you got not only a gathering charge and a proportion of some I. C. C. charge, but also a third charge?

A. No, sir, I just meant the second charge.

Mr. Avis: Does he mean that? That he just meant the second charge? He meant the first and second charge, didn't he?

Q. What did you mean by this answer, "All the points named in this list"?

A. I meant the first and second charge.

Q. You meant the gathering charge and a proportion of a through rate under some I. C. C. tariff, is that right?

A. Yes, sir, I did.

Q. Will you look at Plaintiff's Exhibit 4 and add together the two totals which appear on Sheet No. 1, that is the total, 4,368,718.41, just above the middle of the page, and the total at the bottom of the page, 269,170.27, and tell me the total?

A. The total is 4,637,888.68.

Q. Look at Exhibit 43 and state whether you find that same total on this exhibit, being the first of the two totals?

A. Yes, sir.

851 Q. Does this total mean the deliveries which you have just given me from Exhibit 4 comprise the deliveries that were made on the tenders against which the total on Exhibit 43 was pumped?

A. Yes, sir.

Q. Can you also state whether the amounts of the tenders made by the South Penn Oil Company, Carter Oil Company, and Hope Natural Gas Company, to which you have testified in your direct examination as aggregating 3,646,013.62, being, as I understood you, shipments of Pennsylvania crude oil and Cabell oil produced in West Virginia and tendered by those companies, can you state whether that total of their tenders, as you testified, 3,646,013.62, is comprised within the amount of 4,368,718.41, deliveries shown on Sheet 1 of Exhibit 4?

A. Yes, sir.

Mr. Crawford: I shall have to ask some questions about this map, No. 4, in order to identify it with a part of map No. 1, which was partially identified the other day, but there appeared to be some discrepancies, and those I understand have been cured; but inasmuch as you are going to ask some questions of the witness, I ask if I may defer that until, so to speak, the tennis ball comes back to me? I wish to call another witness who desires to leave town tonight, if possible.

Mr. Avis: Certainly.

852 LEMUEL W. YOUNG, JR., a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Crawford:

Q. Mr. Young, are you connected with the South Penn Oil Company?
A. I am.
Q. What it your connection with it?
A. I am the President.
Q. Where is the South Penn Oil Company incorporated?
A. Pennsylvania.
Q. In a general way what is its business?
A. Its principal business is producing oil, and we do a little gas business and a marketing business in connection with it; we buy and sell oil.
Q. In addition to producing oil do you buy credit balances from other producers?
A. We do.
Q. Was that the case during the ewelve months endings June 30, 1919?
A. It was.
Q. In all the questions that I ask you, unless I state otherwise, I will be obliged if you will assume that I am asking you about those twelve months, and answer accordingly, if you will be so
853 kind. Now, during those twelve months did you both produce oil in the State of West Virginia and purchase credit balances from other producers?
A. Yes.
Q. Credit balances of what pipe line company?
A. The Eureka Pipe Line Company.
Q. What was the practice of your company during that time as to how soon after you obtained the credit balances that you would make tenders of the oil?

Mr. Avis: We object to that as being immaterial and irrelevant.

A. As soon as we conveniently could.
Q. Well, how did it work out in actual practice during those twelve months?
A. Well, we have a number of customers, and just as fast as the oil would accumulate we would make certain deliveries to certain customers.
Q. Can't you tell me what the fact was in days or weeks, whatever it was? How did it work out in practice in those twelve months as to the time that you held the credit before you made tenders?

Mr. Avis: We object to the question. May it be understood that the objection goes to all the questions along this general line that may be asked the witness, without making specific objection in each instance?

854 Mr. Crawford: Certainly.

Q. I am speaking, you understand, of West Virginia oil credit balances with the Eureka Pipe Line Company?

A. I do not believe there was as much as a week elapsed at any time that we did not make deliveries or tenders on the oil that we had.

Q. In other words your tenders were made at least as often as once a week, is that what you mean?

A. Yes.

Q. And did you keep the amounts of the credit balances tendered up closely during the time—I mean when you made these weekly tenders?

A. Very closely.

Q. In respect to making tenders of the amounts of the credit balances, did you make any distinction between those which represented your own production and those which represented credit balances purchased from other producers?

A. No distinction.

Q. In other words your tenders were made on the combination of the two?

A. On the oil that we had to our credit, whether we produced it or bought it.

Q. Can you tell me the amount of your tenders of oil, the amounts of tenders which you made on the credit balances which
855 you held with the Eureka Pipe Line Company during the twelve months referred to?

A. The amount of the tenders which we made?

Q. Yes.

A. It would be in the neighborhood of 10,000 barrels.

Q. I do not mean the amount of a single tender, but the total?

A. Total for the year?

Q. Total for the year?

A. It would make it about 3,500,000 barrels; somewhere near that.

Q. When you said about 10,000 barrels you meant a day?

A. I meant a day.

Q. It has been testified by the shipping agent of the Eureka Pipe Line Company who testified in this case that the amounts of the tenders received from Morgantown, West Virginia by the Eureka Pipe Line Company from your company during the period in question were 2,942,915.42. Are you able to state whether that is correct or not?

A. It is close. We have about 2,800,000 that have been covered by tenders through Morgantown.

Q. Your records show 2,800,000?

A. About that.

Q. During those twelve months had you any business arrangement with particular customers as to furnishing them with
856 oil produced in West Virginia?

A. We have our regular custom of doing business with them; we have a regular trade.

Q. You did at that time?

A. Yes.

Q. Did you direct the delivery to the Parkersburg refinery of the Standard Oil Company of New Jersey during this period of a certain amount of oil corresponding to a certain proportion of your credit balances with the Eureka Pipe Line Company?

A. We did not direct any particular proportion.

Q. What orders, what shipping orders or directions did you give?

A. We did have delivered to them about 2,200 barrels a day.

Q. Was that in accordance with any agreement or understanding with any one?

A. That we would do that until we ceased to do it.

Q. How did you arrive at the amount that you were to deliver to them?

A. We were to deliver them about the capacity of the refinery there, not to exceed 75,000 barrels a month.

Q. And you did deliver them under that arrangement, or caused to be delivered to them 2,200 barrels a day?

A. Practically 2,200 barrels a day.

Q. Did you cause to be delivered any other oil in West
857 Virginia to any one in West Virginia—I mean any refinery?

A. The Ohio Valley Refining Company, St. Mary's.

Q. Was there any arrangement there as to the amount or proportion that you should deliver?

A. About 500 barrels a day.

Q. Was that in accordance with an arrangement that you had with the St. Mary's refinery?

A. That was a custom that we had, that we would do that until we let them know we would not do it.

Q. Excepting those two refineries in West Virginia, did you cause any oil to be delivered to any one within West Virginia?

A. I am not clear about the question—caused to be delivered. You understand we had some with the Pure Oil Company.

Q. You mean the Pure Oil Company was one of your customers?

A. The Pure Oil Company was one of our customers.

Q. Were deliveries made by the Eureka Pipe Line Company to the Pure Oil Company on your behalf?

Mr. Avis: I object to that question——

Q. I do not mean the Pure Oil Company, I mean the Pure Oil Pipe Line Company for the Pure Oil Company.

Mr. Avis: I still object to the question, although my former objection goes to all these questions. This particular objection is
on the ground that he has not shown any knowledge of the
858 fact that the Eureka Pipe Line Company actually delivered any physical oil to the Pure Oil Pipe Line Company.

Q. Did you direct the Eureka Pipe Line Company to make some deliveries on your behalf to the Pure Oil Company during that period?

A. I think our direction was to deliver to the credit of the Pure

Oil Company. I would not be clear on that, whether it was the Pure Oil Company or the Pure Oil Pipe Line Company. I think it was the Pure Oil Company.

Q. The Pure Oil Company was a refining company, wasn't it?

A. Yes.

Q. Was not your direction to deliver to the Pure Oil Pipe Line Company?

Mr. Avis: We object to that on the ground that it suggests an answer and is irrelevant and improper.

Q. Excluding the amounts that were delivered for your account to the two refineries you have mentioned, and the amount, if such there was, delivered by the Eureka Pipe Line Company on your account to the Pure Oil Pipe Line Company, excluding those three, to what other points was the balance of the oil covered by your tenders consigned?

A. Our tenders were consigned to points without the State, to Pennsylvania, New Jersey.

859 Q. Confining yourself to the same tenders, that is, excluding the first three lots of oil that we have been discussing, to what destination or destinations was it the purpose and intention of yourself, or of the management of the South Penn Oil Company, that that oil should eventually go?

Mr. Avis: I make the additional objection to this question that it is improper and irrelevant on other grounds than those named in the objection to the general question that has been asked the witness.

A. It was our intention that it should go to our customers at their refining points.

Q. And those refining points were where?

A. In Pennsylvania and in New Jersey.

Q. When did you first go with the South Penn Oil Company?

A. In the spring of 1918, March 1.

Q. Did you find any arrangement in force at that time in regard to the customers of the South Penn Oil Company who were to be supplied?

A. There has been no change in the customers since I have been with the company.

Q. In a general way, without enumerating the customers, state what the arrangement was as to the oil that you might produce or buy?

A. It has been our practice to purchase such oil as is offered to us and add to it such oil as we produced and distribute it among

860 our regular trade in the proportion in which we have been in the habit of distributing it.

Q. Is that true ever since you went with the company?

A. Yes.

Q. To the same customers?

A. Yes.

Q. Then was it a fact that you knew even before you produced

the oil yourself, or purchased credit balances, where you intended to send the oil, to sell it?

A. Yes.

Q. And did you intend throughout the period, even before you produced oil or before you purchased credit balances, to send it to the same customers in substantially the same way that you have described?

A. Yes.

Mr. Crawford: You may cross examine.

Mr. Avis: Having objected to each and every question asked the witness and strike out all of his testimony, and not waiving the objections or the motions, we cross examine pending the final decision of the Court on the said objections and motions.

861 Cross-examination.

By Mr. Avis:

Q. Mr. Young, who are the customers that you referred to?

A. The Standard of New Jersey——

Q. Standard Oil Company of New Jersey?

A. Standard Oil Company of New Jersey; the Vacuum Oil Company; the Atlantic Refining Company; Pure Oil Company; A. D. Miller Sons & Co.; Beaver Refining Company; Ohio Valley Refining Company; Emlenton Refining Company; Conewanga Refining Company; the Corn Planter Refining Company; Titusville Oil Works; Smith Refining Company. There are eight other companies. I can't just name them, eight other small companies.

Q. Of the total oil produced or purchased by your company and thereafter sold, what percentage of it goes to the Standard Oil Company of New Jersey, approximately?

A. Do you mean of this Buckeye Oil, or do you mean of our entire——

Q. I was speaking more particularly of your West Virginia Oil?

A. I would think it would be in the neighborhod of 25 per cent.

Q. What percentage would go to the Atlantic Refining Company?

A. The Atlantic Refining Company would get, I presume, about eighteen or twenty per cent.

Q. And what percentage would go to the Vacuum Oil Company?

A. About twelve per cent.

862 Q. Now, you delivered other oil to these customers, did you not, oil produced in other states?

Mr. Crawford: I object to that as immaterial and irrelevant and not pertinent to the issues in this case.

Mr. Avis: The questions of counsel for the plaintiff were so comprehensive that I do not know whether he meant to confine his questions to the oil produced in West Virginia or not. If he meant to confine his questions to oil produced in West Virginia, and it is so understood, I do not care to ask about any oil produced anywhere else.

Mr. Crawford: I did so intend, and it may be so understood.

Mr. Avis: Did the witness mean to confine his answers, when he answered Mr. Crawford, to oil produced in West Virginia?

The Witness: I did. I understood I was talking about West Virginia oil in giving these various deliveries. May I say just a word? In speaking about these other refineries I have been having in mind all our business in giving the customers we had. Those customers are not necessarily customers for Eureka oil.

By Mr. Crawford:

Q. When you were testifying in answer to my questions you understood you were testifying about credit balances with the Eureka Pipe Line Company?

863 A. Entirely.

Mr. Avis: With that understanding I abandon the question.

By Mr. Avis:

Q. When I asked you who were your customers I was referring also to oil produced in West Virginia and handled through the lines of the Eureka Pipe Line Company. Who are your customers for that oil?

A. The customers for that oil would be the Pure Oil Company, the Standard Oil Company of New Jersey, the Ohio Valley Refining Company——

Q. That is in West Virginia, isn't it?

A. Yes, in West Virginia. The Atlantic Refining Company and the Vacuum Oil Company.

Q. What percentage of the oil produced or purchased by your company in West Virginia is consigned to the customers for the oil whom you have previously named, in percentages?

Mr. Crawford: I object to that as incompetent, irrelevant and immaterial and not pertinent to the issues in this case.

A. You are asking me for the percentage going to the various customers of the oil we produce and purchase in West Virginia?

Q. Both, purchased and produced, and the name of the customer to whom it went?

A. Yes, I understand.

864 Q. For the twelve months ended June 30, 1919?

A. —.

South Penn Oil Company.

Joseph Seep Purchasing Agency,

26 Broadway.

New York, December 5, 1919.

Mr. F. L. Crawford,
c/o Beck, Crawford & Harris, Attys.,
32 Liberty Street,
New York City.

DEAR SIR:

Of the oil purchased and produced in the State of West Virginia by the South Penn Oil Company, between July 1, 1918 and June 30, 1919, we sold the following percentages to our customers:

Standard Oil Company, N. J.	48.94%
Atlantic Refining Company	23.63
Vacuum Oil Company	11.52
Pure Oil Company	10.90
Ohio Valley Refining Co.	3.48
Chesebrough Mfg. Co.	0.01
Eureka Pipe Line Co. (overdrafts)	0.01

In reply to the question whether or not we directed the Pipe Line to deliver oil to the Pure Oil Company or to the Pure Oil Pipe Line, I learn that we directed the Eureka Company to transfer oil
865 standing to our credit in their lines, to the credit of the Pure Oil Company.

Yours truly,

SOUTH PENN OIL CO.
By L. W. YOUNG, JR.,
President.

L. W. Y. P.

Q. Mr. Young, you made some remark or statement in reply to a question propounded on your direct examination as to your intention to send certain oil out of the State of West Virginia. You also intended to deliver certain oil within the State of West Virginia, didn't you?

A. Yes, sir.

Q. And you had no intent as to any particular oil, did you? As to any particular physical oil, did you?

A. Except a particular grade; that is what we call Pennsylvania grade oil.

Q. That is the only oil you produce in Pennsylvania, is it not?

A. There is a little other oil that is produced down there, the Cabell oil, which does not amount to very much; practically all in West Virginia is Pennsylvania grade.

Q. And a little oil produced by your company down in Wayne County called Somerset?

A. Yes, a very few barrels.

Q. Outside of those two small quantities that you have referred to, you had no intent as to any particular physical oil going outside the State and as to any particular physical oil going to these
866 refineries within the State of West Virginia that you have referred to, did you?

A. Only the oil that we produce and purchase.

Q. I understand, just the oil of that grade, but no particular quantity of it or no particular part of it was set aside and could be distinguished from the balance of the oil produced or purchased by you, is that not so?

A. This covers all the oil we purchase or produce. We have customers for all the oil.

Q. I understand, but you did not particularly intend as to any particular physical oil that that particular physical oil should go to the refinery, to any particular refinery in the State of West Virginia, did you?

A. Your question is that there was no particular oil that we expected to go to a particular refinery in the State of West Virginia?

Q. Yes, sir, or outside of the State, any Pennsylvania grade of oil, I mean?

A. You understand we don't have any particular batch of oil. It is just our oil.

Q. I understand?

A. We have a credit of so many thousand barrels. We expect to deliver that in the same proportion to the various buyers.

Q. That is, all the oil purchased or produced by you you intended to consign for delivery to certain customers, a certain quan-
867 tity of oil, but no certain particular physical oil, do you?

A. Well, just the oil that we purchase or produce.

Q. That is my question but you do not separate it up, do you, and say, "I am going to consign this particular batch of oil to so and so, and set this aside for so and so, and this aside for so and so," do you?

A. Well, our custom, of course, has been to sell the oil as fast as we buy it or produce it. We do not have any accumulation.

Q. I don't think you understand me. When you produce or buy oil it is run into the lines of the Eureka Pipe Line Company, isn't it?

A. Yes.

Q. And is mixed with the other oil that is in those lines, is it not?

A. It is simply a credit to a man for the amount of oil that he puts in the lines.

Q. You do not set aside any particular amount of oil that can be identified and that you can point out and say, "This oil is for the refinery at Parkersburg," do you?

A. I just don't quite get the idea.

Q. Isn't it a fact, Mr. Young, that that oil produced or purchased by you, you just order a quantity of the whole to be sent to a certain person?

A. Yes.

868 Q. Then you don't set aside and run off by itself so that it can be identified, any particular part of that oil, or the physical oil itself that you can say that you intended to go outside of the State or that you said you intended to go inside of the State, is not that correct?

A. Except in amounts, we say so many thousand barrels of our credit.

Q. But amounts are not physical oil set aside for a particular purpose. See if I can illustrate it. I have twelve barrels of oil here. I have twelve customers, and I want a barrel to go to each one of those customers, and I go to my man that I want to ship it, and I say, "John, that particular barrel is to be set off to one side. That goes to the Ohio Valley Refining Company." And I say, "This other barrel goes to the Elk Refining Company in Kanawha County, West Virginia, and this goes to the refinery at Parkersburg, of the Standard Oil Company of New Jersey, and this is to go outside of the State to the Vacuum Oil Company, and this is to go outside of the State to the Standard Oil Company." You don't do anything like that to identify the oil, do you?

A. No.

Q. In other words the intent that you referred to in your testimony is simply this, that you intended all the oil, without identifying it or separating it, to deliver such a quantity within the State of West Virginia and such a quantity without the State of

869 West Virginia, is that not true?

A. Yes, sir.

Q. And there was no particular oil or barrel of oil or barrels of oil that you had in mind as remaining in the State, or had in mind as going out of the State, was there, except a quantity of oil?

A. Except a quantity of oil.

Q. But no particular oil that had been set off in the tank or run off some place where it could be identified, is that not true?

A. No, other than the quantity of oil that we had purchased or produced.

Q. I am referring to that always in my question. What position, if any now, does Mr. Joseph Seep occupy with the South Penn Oil Company?

A. He is Chairman of the Board of Directors.

Q. And he is a director, of course?

A. Yes.

Q. You are also a director, are you not, Mr. Young?

—. ——

Q. As well as President?

A. Yes.

Q. Do you know what your company pays per barrel for gathering oil within the State of West Virginia, or paid during the year ending June 30, 1919?

A. I cannot say that I know the exact amount we paid.

870 I don't remember just the amount we paid.

Q. Do you know the total amount you paid?

A. It is the regular gathering charge.

Q. It is the regular gathering charge fixed by tariff?
A. Fixed by tariff, yes.
Q. The tariff for the period in question was twenty cents per barrel. Is that the amount that your company paid?
A. Yes.
Q. Did you get any rebate or return of any part of that money?
A. No, we do not pay a gathering charge except as we sell the oil, and our customer pays us back the gathering charge. We buy oil on commission.
Q. How do you settle with the Eureka Pipe Line Company for gathering your oil?
A. We pay the Eureka Pipe Line Company for gathering the oil, and we collect from our customer.
Q. You pay them the money, do you?
A. We pay them with a check.
Q. With a check?
A. Yes.
Q. Then when you tendered or your company tendered one hundred barrels of oil during the period we are referring to, they did not take two barrels off of you for evaporation and waste, did they?
871 A. They deducted according to their fixed charge the same as from any one.
Q. The same as from any one?
A. Yes. You understand we buy,—what we buy we buy with that deduction. What we produce is deducted from us before we get our credit.
Q. In settling for the transportation of your oil you always pay the full tariff rate for the transportation of that oil?
A. We do not pay the rate. We bill it direct to our customer, the tender charge.
Q. I thought you said you settled with the Eureka Pipe Line Company?
A. At the time we make a tender to the Eureka Pipe Line Company, then they bill us for the gathering charge. For the amount of oil we have tendered, we pay them that.
Q. Of twenty cents a barrel?
A. Yes, twenty cents a barrel; at the time the goods reaches its destination, then is due the money on the tender, and that is paid direct by our customers.
Q. Paid direct by your customer?
A. Yes.
Q. As I understand you, you pay the Eureka Pipe Line Company the twenty cents gathering charge?
A. We pay the gathering charge.
872 Q. Do you in any way, shape or form in the settlement or adjustment of that rate, get any discount or rebate thereon?
A. None whatever.

Mr. Avis: I think that is all I want to ask.
Mr. Crawford: No more questions.

Deposition closed.
Signature waived by consent of counsel.

873 VERNON S. SWISHER resumed the stand:

Mr. Crawford: I now produce an amended map which is intended to take the place of Plaintiff's Exhibit 34, fourth map of December 2, 1919, and I ask that this be marked with that exhibit number and that I be permitted to withdraw the former map so marked.
Mr. Avis: That is entirely agreeable.

Map received in evidence and marked Plaintiff's Exhibit 34, Fourth Map, December 2, 1919.

Mr. Avis: We have no objection whatever to the changes having been made on the map or the substitution of the new map for the one that was previously introduced, but we object to the competency of the map at all.

Redirect examination.

Continued by Mr. Crawford:

Q. Mr. Swisher, will you look at Plaintiff's Exhibit 34, fourth map, being the revised map just produced and marked, and compare it with the Plaintiff's Exhibit 2, first map, and state whether all the lines representing pipe lines which appear within the boundaries of the State of Pennsylvania and in West Virginia as far down as Morgantown and extending up as far as Olean are reproduced on this map, Exhibit 34, fourth map?
A. Yes, sir, I have compared it.
Q. Are there any additional pipe lines laid down upon Exhibit 34, which do not appear upon Exhibit 32 first map?
A. No, sir.
874 Q. They are identical, are they?
A. They are identical.
Q. Except that Plaintiff's Exhibit 34 is on a much larger scale than Plaintiff's Exhibit 32?
A. Yes, sir.

Recross-examination.

By Mr. Avis:

Q. Mr. Swisher, I wish you would turn to Plaintiff's Exhibit No. 4, and look at the total figures shown thereon, namely, 16,015,736.04, and I ask you how many barrels of oil did your company retain in your proportion of the one per cent for delivering the same?
A. I cannot tell without consulting the record.
Q. Couldn't you take the tariffs upon which this oil was carried, together with this Exhibit 4, which refers to those tariffs, and inform us as to that?
A. No, sir, I could not do it without consulting the records.

Q. The records other than the ones I have referred to?
A. Yes.
Q. You could not make a calculation from that?
A. Well, I don't believe—I don't know whether I could get it or not from that.
Q. For instance, take the first item embraced in this 16,015,-736.04 barrels total for Bayonne, New Jersey, Buckeye I. C. C.
875 212, 622,037.29 barrels. Do you know from that tariff the point of origin of the oil shown you?
A. Yes.
Q. And you know what proportion of the one per cent of that number of barrels is, do you not?
A. I cannot recall it, but it is in the records some place, but I don't know where.
Q. Couldn't you take the number of barrels, giving the point of origin, the point of destination, and the rate as shown on I. C. C. No. 212, and answer the question that I asked you about that 16,015,-736.04 barrels? I don't mean offhand, Mr. Swisher, but without going back to your records which I understand are in Pittsburgh, or are they here in the city?
A. They are in Oil City. I am arranging to furnish you the one per cent deductions on all oils in response to a previous question. It would take some time to figure that out.

Mr. Crawford: You understand the point, Captain Avis, that there is no uniformity about that deduction? That every tariff, as I understand, presents a different sum in arithmetic?
Mr. Avis: I know that. I of course understand that.
Mr. Crawford: It is not as if it were exactly the same on every one.
Mr. Avis: I understand that.

Q. In connection with the furnishing of that I wish you
876 would show me your proportion of each grade of oil received by you. I think I did ask you that?
A. I understand it so. The one per cent deduction will refer to all grades of oil?
Q. Yes, and show each separately, you understand?
Mr. White: Show it by grades.
The Witness: All grades for all the oils handled during that period?
Q. Yes.
A. That is the way I understand it.
Q. Mr. Swisher, I am entirely confused. I want to ask you another question, and I call your attention to Plaintiff's Exhibit No. 4. Did I not understand you to say that on all oil on which you received a gathering charge of twenty cents there was a deduction of the two per cent for evaporation and waste, but that your gathering charge was collected on the full one hundred per cent?
A. No, sir.
Q. Then, as I understand you now, if I delivered to you for

shipment one hundred barrels of oil you only charge me twenty cents a barrel on ninety-eight barrels of it for gathering it?

A. Yes, sir.

Q. And make no charge to me on the other two barrels?

877 A. We do not make any charge for the other two barrels.

Q. You testified on your redirect examination concerning what is marked the second regulation on tariffs Nos. 149, 153, 154, 138, 143, 135, 134, 142, 158, 145, 146, 144, and 148. I repeat as to the regulation appearing on the back of those tariffs, I think the one marked second, referring to the provisions reserving the right to hold oil consigned outside of the State until it aggregated certain quantities before it could be forwarded to destination; and you said that that regulation varied in several instances, and in one instance it only required a batch of an aggregate amount of one thousand barrels. That is true, is it not?

A. Yes, sir.

Q. And that it varied between that one thousand barrels in some instances, and a maximum of 75,000 barrels. That is also true, is it not?

A. Yes, sir.

Q. In other words the regulation as to the 75,000 barrels simply applied at some places, and at others the amount required was less than that. That is true, is it not?

A. Yes, sir.

Mr. Crawford: I think that he ought to be shown these tariffs.

Mr. Avis: You have already shown him all of them.

Mr. Crawford: But he ought to have them in his hand.

878 Mr. Avis: He is perfectly welcome to have them. These are general questions and you brought it out. I just called your attention to what I was referring to. I asked the general question, Mr. Crawford, if it did not vary in some places.

Mr. Crawford: All right.

Q. Now, if I tendered you oil from Bula, Downs, Hoffman, Jakes Run, or Littleton, West Virginia, in one thousand barrel lots you would forward the one thousand barrel lots to destination would you not?

Mr. Crawford: Under what tariff?

Q. Referring to tariff I. C. C. No. 148?

A. From Ewings, yes.

Q. Does that tariff show that that is from Ewings?

A. It would be held at Ewings until there was one thousand barrels, at that point of that kind of oil for destination.

Q. That is at Ewings itself ?

A. Yes, sir.

Q. But you would move it out of the State on a tender of one thousand barrels, would you not?

A. Yes, sir; or less, I believe.

Q. If I were a producer of oil living in the Blue Creek Oil field of Kanawha County, West Virginia, and tendered you one thousand

barrels of oil for shipment outside of the State you would reserve the right to hold that until other oil was added to it in sufficient quantities to amount in the aggregate to 75,000 barrels be-
879 fore you would forward it to its destination outside of the State, would you not?

Mr. Crawford: Under what tariff?

Mr. Avis: No tariff. It does not refer to tariffs.

Mr. Crawford: Yes, it does. In your question I submit you should state under what tariff you propose to ship it.

Mr. Avis: I am not referring to a tariff in my question, and I haven't intended to refer to a tariff in my question.

A. You will have to say what tariff you want it consigned on.

Q. Well, we will say,—I don't know what tariff you consigned it on myself, but I would say I wanted to send it to Bayonne, New Jersey, then would you not hold it in the way I have described?

A. That would have to go to Morgantown and then would go along with a batch equaling 75,000 barrels.

Q. But it would not go forward until it reached 75,000 barrels?

A. It could go forward with any batch of 75,000 barrels.

Q. I understand, but you would not take 1,000 barrels that was tendered to you and send it forward?

Mr. Crawford: Forward from where?

Q. From Morgantown, to Bayonne, New Jersey?

A. If that was the only batch of 1,000 barrels we had, no, sir.

880 Q. But if under the tariff I. C. C. No. 148, I should tender you 1,000 barrels, you would send it on, or forward it right straight on to its destination, would you not?

A. We would forward it and it would be held at Ewings.

Q. You have a tariff from Cabin Creek. Please refer to No. 158.

Mr. Crawford: What is that?

Mr. Avis: Cabin Creek to Marcus Hook.

Q. Meaning I. C. C. No. 158, which provides for the transporting of oil from Cabin Creek, State of West Virginia, to Marcus Hook, Pennsylvania. You would not forward to its destination my 1,000 barrels of oil tendered to you at Cabin Creek station until other oil was added to it in the aggregate to amount to at least 50,000 barrels, would you?

A. I am not sure, but I believe that regulation is that the Pure Oil Pipe Line Company holds it until that aggregate is reached.

Q. What does it say on the back of that tariff?

A. That when the oil shipped thereunder in conjunction with other oil of the same kind and quality from any other point, and consigned to the same destination shall in the aggregate amount to at least 50,000 barrels, then such aggregate amount will be forwarded to destination.

Q. Oil delivered to you in the Blue Creek District of Kanawha County would move forward through the same lines from the
881 Blue Creek field that oil produced at Cabin Creek station would move in, would it not?

A. Yes, sir.

Q. It is much further from the Cabin Creek than it is from the Blue Creek district, is it not?

A. It is a little further.

Q. I mean to Morgantown?

A. Yes, sir.

Q. This morning you referred to the division of the rates among the several carriers and said it was arrived at by a rule. What is the rule for the division of through rates?

A. The general rule for the division of rates on through tariffs is as follows: Ten per cent of the rate is divided equally among all the carriers a party to the tariff. The remainder 90 per cent of the rate is divided in proportion to the number of miles each carrier moves the oil through its lines. In addition to this each carrier is entitled or receives a credit for pumping oil over the lines or through the lines of any other carrier, at the rate of fifty per cent of the mileage through which they pump the oil through the other carrier's lines. The one per cent oil, the one per cent deduction in oil is divided in proportion to the number of miles each carrier handles the oil.

Q. There is no initial division on that one per cent?

A. No what?

882 Q. No initial division, as you referred to, about the ten per cent of the rate?

A. No, the one per cent is direct.

Q. When you speak of the ten per cent you mean the ten per cent of the through total rate?

A. Yes, sir, the ten per cent of the through total rate.

Q. The total rate?

A. Yes.

Q. This division is made by agreement among the carriers, is it not?

A. Yes, sir.

Q. Does your company make any division whatever of the twenty cents a barrel gathering charge that was collected during that year ending June 30, 1919, with any other carrier?

A. No, sir, the twenty cents all goes to the initial line.

Q. It is all retained by it?

A. Yes, sir.

Q. Do you receive any part of any gathering charge collected by any other carrier?

A. Only in this way——

Q. Answer the question by yes or no, and then you can explain, if you wish?

A. Yes. I will explain: The South West Pennsylvania Pipe Lines have a gathering rate of 32 cents per barrel. They

883 have a tariff in connection with the Eureka Pipe Line Company and Buckeye Pipe Line Company through which the oil is delivered through their lines back into their own system where they again make deliveries to the refineries in their districts. Whatever oil is handled by these parties, they get a small proportion for handling the oil through their lines.

Q. You say "they get." Whom do you mean?
A. I mean the Eureka Pipe Line Company would get a small proportion of that. That would be just a small proportion, just like a proportion of the through rate. That would be all we would get from that service.
Q. Do you get any in that way from any other pipe line company?
A. No, sir.
Q. Then that is a source of revenue to your company that is not shown on this Plaintiff's Exhibit 4, is it not?
A. It is shown there in the South West I. C. C. No. 85, I think; the last two items on the first page of that table.
Q. Please turn to I. C. C. tariff No. 85. I note there that the South West Pennsylvania Pipe Lines make a charge of 32 cents a barrel for gathering and transporting oil from wells to other points on the South West Pipe Lines within the State of Pennsylvania. That is the 32 cents that you have referred to?
A. Yes, sir.
Q. In that case to sundry points in Pennsylvania, as you
884 have described is not an additional rate imposed thereon?
A. No, sir, that is the proportion as shown on that table that they get.

Mr. Crawford: That who gets?
The Witness: That the Eureka Pipe Line Company gets.

Q. This is the proportion shown on this table that you get of that thirty-two cents?
A. Yes.
Q. I am asking you if the companies handling that oil do not get an additional sum for handling it?

Mr. Crawford: Will you please confine your question to the Eureka?
Mr. Avis: No, that they all together get it.

Q. That is, in addition to the thirty-two cents?
A. The South West gets the thirty-two cents.
Q. Yes, and gives you part of it?
A. Gives the Eureka Pipe Line a part of it, if they handle any oil under that tariff?
Q. You only get for handling oil consigned to sundry points in Pennsylvania a proportion of the rate shown on I. C. C. tariff No. 85 appearing on page 1 of Exhibit 4, is that not true?
A. Yes, sir.
Q. Then who is the consignor of the oil moving under I. C. C. No. 85?
A. That would be the South West Pennsylvania Pipe Lines.
885 Q. They would be consigning their own oil, would they not?
A. Yes, sir.
Q. But if an individual would consign oil to sundry points in Pennsylvania he would have to send it on some other tariff, would he not, other than the South West Pennsylvania Pipe Lines?

A. There is no other tariff in existence.

Q. If I as an individual should tender your company in the State of Pennsylvania at any place, or tender the South West Pennsylvania Pipe Lines any place within Pennsylvania for shipment to Morgantown, West Virginia, 75,000 barrels of oil, I would have to pay to the South West Pennsylvania Pipe Lines not only the thirty-two cents for gathering the oil, but also an additional rate for transporting it, would I not?

A. If there was a tariff for it.

Q. Isn't there a tariff for it?

A. No, sir.

Q. Suppose I individually should strike an oil well on the South West Pennsylvania Pipe Lines near the West Virginia border, or near any station from which you pump oil, and for the purpose of this question we will say the nearest station the South West Pennsylvania Pipe Lines has in Pennsylvania, for shipment to points in Pennsylvania that are embraced in the word- "sundry points" appearing on Sheet 1 of Plaintiff's Exhibit 4, wouldn't the South West Pennsylvania Pipe Lines first charge me thirty-two cents for gathering that oil, and wouldn't they also charge me a
886 rate for moving it to such sundry points?

Mr. Crawford: I object to the question as immaterial and irrelevant and not pertinent to the questions of this case. I object to it further on the ground that the tariff intended, if any, should be pointed out by counsel; and if there be no tariff, as I understand is the case, the question is entirely incompetent, because under the law there could be no interstate movement without having a tariff filed with the Interstate Commerce Commission. Such a movement would be impossible under the law.

(The question was repeated by the stenographer.)

A. The rate you would have to pay would be thirty-two cents per barrel, and that would be all.

Q. What is the nearest station for which the South West Pennsylvania Pipe Lines has a tariff at which oil gathered by the South West Pennsylvania Pipe Lines is collected for transportation to sundry points within the State of Pennslyvania under I. C. C. tariff No. 85.

Mr. Crawford: Do you mean passing through West Virginia?

Q. Yes, passing through West Virginia over the line of the Eureka?

A. What is the question?

Q. The question is, what is the nearest station for which the South West Pennsylvania Pipe Lines has a tariff at which oil gathered by the South West Pennsylvania Pipe Lines is collected
887 for transportation to sundry points within the State of West Virginia under I. C. C. tariff No. 85?

A. About a half a mile, I should judge.

Q. What is the name of that station?

A. There is some oil around Miner Station.

Q. And you receive tenders for it through your Miner Station? I mean the South West Pennsylvania Pipe Lines?

A. It is oil produced in the South West Pennsylvania Pipe Lines. In order to get it back into the system it would have to *to* go through the Eureka.

Q. Do you mean that? You said "produced"?

A. I thought you were referring to the South West Pennsylvania Pipe Lines?

Mr. Crawford: Yes, but you said "produced". Do you mean "gathered"?

A. It is gathered in Pennsylvania by the South West Pennsylvania Pipe Lines.

Q. Did you receive tenders of shipments at that station, Miner?

A. No, sir.

Q. From producers?

A. No, sir, we anly received runs from them like from any other shipper.

Mr. Crawford: Whom do you mean when you say "we receive"?

The Witness: The South West Pennsylvania Pipe Lines.

888 Mr. Avis: The witness does not understand my question at all.

Mr. Crawford: I don't understand it myself.

Mr. Avis: There are several questions preceding that, and I thought you were mistaken in answering as to Miner.

(The last few questions and answers were read by the stenographer.)

Mr. Crawford: Who is meant by "Did you receive tenders"? which company?

The Witness: The Southwest Pennsylvania Pipe Lines.

Mr. Crawford: Then I object. If that is what you mean I object to the question on the ground it is immaterial and irrelevant and not within the issues of this case.

Q. By "tenders" I refer to tenders for shipment under tariffs made in connection with the Eureka Pipe Line Company?

A. We do not.

Q. Are there any tariffs issued by the South West Pennsylvania Pipe Lines in connection with the Eureka Pipe Line Company for transportation over the lines of the South West Pennsylvania Pipe Lines, and the lines of the Eureka Pipe Line Company for sundry points in Pennsylvania?

A. I don't understand your question.

Mr. Avis: I will ask that the question be repeated.

(The question was repeated by the stenographer, as follows: "Q. Are there any tariffs issued by the South West Pennsylvania

889 Pipe Lines in connection with the Eureka Pipe Line Company for transportation over the lines of the South West

Pennsylvania Pipe Lines, and the lines of the Eureka Pipe Line Company for sundry points in Pennsylvania?")

A. The only tariff that could be used would be this tariff No. 85.

Q. On Plaintiff's Exhibit 4, what points or places are covered by the term "sundry points Pa."? What sundry points is meant by that?

A. By "sundry points" is meant the destinations for the oil.

Q. What are the names of the places?

A. There is Freedom, Pennsylvania; Coraopolis, Pa.; Allegheny, Pa.; Pittsburgh, Pa.; Oak Grove, Pa.; I think that covers them.

Q. Suppose I were a producer of oil on the lines of the South West Pennsylvania Pipe Lines, and should tender that company 75,000 barrels of oil for transportation to Freedom, Pa., wouldn't I have to pay thirty-two cents gathering charge, and also an additional rate for transporting that oil?

Mr. Crawford: I object to that as irrelevant and immaterial, and not within the issues of this case. The South West Pennsylvania Pipe Lines is not a party to this proceeding.

Mr. Avis: I am still referring, as I have explained heretofore, where it would have to also pass through the lines of the
890 Eureka Pipe Line Company.

Mr. Crawford: My reply to that is the question is not confined to the part that the Eureka Pipe Line Company has in the matter. If counsel will confine his question to that part then I will withdraw my objection. As it is, it calls for testimony as to the manner in which the South West Pennsylvania Pipe Lines does business.

Mr. Avis: I will stand on the question.

A. The South West Pennsylvania Pipe Lines would collect thirty-two cents, and that would be all.

Q. It does not make any difference where I was producing oil on those lines in the State of Pennsylvania?

A. Within the gathering system of the South West Pennsylvania Pipe Lines, that would be all.

Q. Is that also true of Alleghany?

A. One of these named before?

Q. From any point in that system of the South West Pennsylvania Pipe Lines to Alleghany, that was consigned to Alleghany, Pennsylvania, which had to pass over the lines of your company, the Eureka?

A. Yes, sir.

Q. In other words, under the gathering charge in Pennsylvania a private producer can move his oil, or the oil can be moved over the lines of the South West Pennsylvania Pipe Lines and from their lines into yours to either Freedom, Pennsylvania, Alleghany, Pa., Pittsburgh, Pa., Coraopolis, Pa., or Oak Grove, Pa., without
891 paying any charge without standing any charge for the movement of such oil except the thirty-two cents gathering charge.

Mr. Crawford: I object to that as immaterial and irrelevant and not within the issues of this case.

A. Yes, sir.

Q. What is the nearest point or nearest place to Coraopolis, Pa. that oil deliveries are made over the lines of the South West Pennsylvania Pipe Lines?

Mr. Crawford: I make the same objection.

A. What is the question?

(The question was repeated by the stenographer.)

A. The refineries are right at Coraopolis. The deliveries are made right to them at that point.

Q. There was no other place near Coraopolis to which to make deliveries, any towns, cities or villages?

A. Coraopolis is where the refineries are located.

Q. Then all oil produced in Pennsylvania consigned on the lines of the South West Pennsylvania Pipe Lines, consigned to Freedom, Alleghany, Pittsburgh, Coraopolis, or Oak Grove, would be transported to those places without any other charge than the gathering charge?

Mr. Crawford: I make the same objection.

Q. Is that not true?

892 A. That is, all oil gathered by the South West Pennsylvania Pipe Lines.

Q. I say, gathered by the South West Pennsylvania Pipe Lines. That is true, is it not?

A. That is true.

Q. You carry that on the local rate? That is, your company, to go to those places,—when it does go, does it always have to go through the lines of the Eureka?

A. No, just a few isolated points.

Q. Does any person deliver to the South West Pennsylvania Pipe Lines oil for transportation for Freedom, Alleghany, Pittsburgh, Coraopolis, or Oak Grove, which is handled through your lines, the Eureka lines, other than the South West Pennsylvania Pipe Lines?

A. What is the question?

(The question was repeated by the stenographer.)

A. If I understand the question, there is Eureka oil tendered on Eureka tariff for the points in Pennsylvania,—one of those points.

Q. I mean any person other than the South West Pennsylvania Pipe Lines tenders oil on I. C. C. tariff No. 85,—other than the South West Pennsylvania Pipe Lines?

A. No, sir. The object of the I. C. C. tariff No. 85 is to get the Pennsylvania grade oil back into Pennsylvania in order to make deliveries.

Q. No oil is delivered to your company for transportation
893 to sundry points in Pennsylvania under I. C. C. tariff No. 85 except by the South West Pennsylvania Pipe Lines, is that true?

A. You say no oil is tendered?

Q. I said delivered?

A. No. I mean there is no other oil delivered except in that manner.

Q. To whom did that oil belong that was so tendered for sundry points in Pennsylvania under that tariff?

A. Shown on Exhibit 4? This oil was not tendered by any one particularly. The oil belongs to the producer.

Q. Why would it go to those refineries if there was not some tender or direction to the South West Pennsylvania Pipe Lines to carry that oil to those refin-ries?

A. The refiners have certain balances to their credit. This oil has originally been gathered by the South West Pennsylvania Pipe Lines; but in order to get that oil around to deliver to those refineries, they pay the Eureka Pipe Line Company or the Buckeye Pipe Line Company a small proportion of this rate in order to get it so as they can make deliveries on their credit balance.

Q. Then some oil comes from the Buckeye Pipe Line Company in the same way?

A. Some oil goes through the Buckeye in a little piece there as this tariff states.

894 Q. But it would go through the line of the Buckeye into the lines of the South West Pennsylvania Pipe Lines and through the lines of the Eureka?

A. Back to the South West.

Q. Back to the South West?

A. Yes, sir.

Q. Does any of that refer to the oil produced in the State of Pennsylvania?

A. Yes, sir.

Q. I wish you would turn to the paper that you used to either refresh your recollection or testify from, which showed the amount of tenders by South Penn Oil Company, Carter Oil Company and Hope Natural Gas Company. I note after the words "South Penn Oil Company" the word "tenders." And right under the South Penn Oil Company appears the words "Carter Oil Company," and under the word "tenders" above is a ditto mark. I find the words "Hope Natural Gas Company" appearing immediately under "Carter Oil Company." That no such word as "tenders" is written under it, nor any character to indicate the word "tenders." Will you explain that to me, please?

A. The ditto mark *much* have been overlooked. It should be on that also.

Q. It is a mere mistake?

A. Yes, sir.

Q. There is no reason for it?

A. No.

895 Q. As to the particular 7,496.96 barrels of Cabell oil referred to in that paper, to whom did that oil go?

A. The Atlantic Refining Company, Philadelphia.

Q. By whom was that tendered?

A. The South Penn Oil Company.

Q. If Mr. Kenney was correct in his statement that that oil became mixed with the Somerset oil and constituted what he called the Cabell oil, in some instances, then the delivery would have been of that mixture, would it not?

A. Yes, sir.

Q. And you don't mean to say that the 7,496.60 barrels stated in that paper was actual Cabell oil, do you?

A. I mean to say that was the amount delivered against a Cabell oil balance.

Q. Against the Cabell oil balance?

A. Yes.

Q. But you don't mean to say it was Cabell oil delivered?

A. Cabell oil so far as our books are concerned, yes.

Q. But if there were a mixture your books would be wrong, would they not?

A. I don't know. It is Cabell oil, as far as our books show.

Q. I say, but if that were Cabell and Somerset oil mixed together then your books would be wrong, would they not?

896 A. I don't know about that. It is carried as Cabell oil on our books.

Q. I wish you would turn to Plaintiff's Exhibit No. 44. On your re-direct examination this morning that exhibit is intended to recover all of the Somerset oil handled by the Eureka Pipe Line Company for the twelve months ending June 30, 1919, is that not true?

A. Yes, sir.

Q. The deliveries of Somerset oil to your company are made at Tug River Station, are they not?

A. Yes, sir.

Q. About 170 miles from Morgantown is it not?

A. Approximately, I believe.

Q. I note the heading, the second sub-head, the words, "pumped by Morgantown." Why would you not have made that sub-heading "pumped from Tug River" if that was the point of delivery?

Mr. Crawford: I object to that question, because the exhibit was intended to show exactly what it states.

Mr. Avis: I am cross examining him on that exhibit.

Mr. Crawford: That is not a reasonable question.

Mr. Avis: I think Mr. Kenney states in his testimony that all of that oil was first pumped out of Tug River.

Mr. Crawford: There is no objection to your asking that, if you want to, from Tug River, but this exhibit was prepared to

897 show exactly what it is, namely, in one column the amount received from the Cumberland, and in the second column the amount pumped from Morgantown.

Mr. Avis: I am trying to get at what it does mean.

Mr. Crawford: It was prepared in accordance with my instructions, and I wish to show certain facts.

Mr. Avis: I don't care under whose instructions this was prepared. I want to find out something about it.

Q. In connection with your question you were asked about that oil. The statement does not show, "amount pumped from Tug River", is in Somerset oil; that is, any Somerset oil handled by your company during the period we have been referring to. That was not pumped from Tug River station?

A. No, sir.

Q. Then why, in making up this exhibit, have you used the heading, "pumped by Morgantown" instead of "pumped by Tug River"?

A. We don't show the Tug River pumpings there. I don't know why it was not shown particularly.

Q. Am I to understand from that that that oil was transported from Tug River to Morgantown before you received any tender of it?

A. No sir.

Q. When that oil was tendered to your company for shipment, whereabouts was it tendered?

898 A. It is tendered in the Cumberland Pipe Line Company from sundry points in Kentucky on a Cumberland Pipe Line Company tender.

Q. But you said this morning in your re-direct examination that you did not receive the tenders for that oil in advance of your moving the oil.

Mr. Crawford: He said he did not receive the tender for oil in advance.

Q. Did you not?

Mr. Crawford: I object to the question because it is flatly in contradiction to the testimony of this witness.

Mr. Avis: I am asking him a question.

A. We did not receive the tender for all of it in advance, no, sir.

Q. And how much of it did you receive tenders for in advance?

A. As stated in previous testimony, it averaged about 150,000 barrels daily, that we would not receive—we did not receive——

Q. (Interrupting.) I don't so recall your testimony. I recall you to say that there was a charge made?

A. That is what I mean.

Q. On the basis of there being 150,000 barrels in your pipe lines, this exhibit shows your daily receipts, average receipts of oil were only 13,222.61 barrels. Now, I am asking you how much

899 of that oil was pumped from Tug River before you received the tenders for it?

A. I don't believe I could tell you unless I could approximate the amount.

Q. With reference to your 150,000 barrels a day that you had received, if you had received that much from the Cumberland Pipe

Line Company untendered it would amount to over 50,000,000 barrels a year in the total, would it not?

Mr. Avis: The question may sound absurd, but the witness said that the untendered amount was 150,000 barrels, and I remind him of the fact that he made that statement, that he said the amount was 150,000 barrels a day.

Mr. Crawford: I do not think he intended to so testify.

The Witness: There was an average untendered oil in the Eureka Pipe Line Company which had been received from the Cumberland of about 150,000 barrels a day. That is the balance untendered.

Q. How much Somerset oil was in the lines of the Eureka Pipe Line Company on the last day of June, 1919?

A. I haven't the records.

Q. Will you please look at the records and furnish that information?

A. That will be shown with the other information.

Q. And in connection with that I would like to know how much of the Somerset oil was in the lines of your company on the
900 last day of June, 1919?

A. Yes, sir.

Q. Then there was no significance or special use by you in that exhibit of the words "pumped by Morgantown"?

A. No, sir, except what it shows there, as I can see.

Q. There are several pumping stations between Tug River and Morgantown, are there not?

A. Yes, sir.

Q. Through which that oil would have to pass?

A. Yes, sir.

Q. You said that in advance of tenders you just moved that oil straight on to Morgantown?

A. Yes, sir.

Q. Did you move it on outside of the State in advance of tenders from Morgantown?

A. No, sir.

Q. You did not?

A. We did not.

Q. Isn't that the reason for the use of the words on that exhibit "pumped by Morgantown"?

A. Isn't what the reason?

Q. Because it was held at Morgantown and not moved by you out of the State in advance of tender?

A. No, sir, I don't think so.

Q. You did not attempt to transport any Somerset oil out
901 of the State of West Virginia in advance of a tender?

A. We did not, except in that small Somerset oil produced in West Virgina.

Q. In Butler District, Wayne County, West Virginia?

A. Yes, sir.

Q. Then if you collected Somerset oil at Morgantown you held it there until you received a tender of shipment for it, didn't you?

A. Tenders were always issued before I believe they reached Morgantown on that oil.

Q. You held it some place until you received tender of shipments in your lines, did you not?

A. It may have been stopped here and there going through in the usual course. I don't think there was any oil stopped. It all went through in the usual course.

Q. You don't know anything about that, do you, Mr. Swisher? You are just expressing a mere opinion, aren't you?

Mr. Crawford: You are asking for it.

Mr. Avis: Yes, sir, but I did not ask his opinion on that.

Mr. Crawford: But you drew out these answers by your questions?

Mr. Avis: I didn't ask for an opinion. I was asking for a statement of fact.

902 Q. You don't know why or how long any Somerset oil was stopped at any station in West Virginia, do you, prior to its reaching Morgantown?

A. I do not.

Q. And when you said you thought a certain thing, you are expressing a mere opinion on a matter you have no knowledge of, are you not?

A. In that connection.

Q. You made the statement that you did not believe any of that oil went out of the State, referring to the Somerset oil covered by Plaintiff's Exhibit 44, in advance of a tender. That you have no actual knowledge of, have you?

A. I know there was no oil reported going outside of the State that was not applied on tenders.

Q. But you have no knowledge whether it did or not?

A. I have reason to believe that must be correct.

Q. I say you have no knowledge of it, have you, of your own?

A. Probably not.

Q. On yesterday when you were cross-examined about the Somerset oil and what you received in the way of so-called "storage charges," that you received approximately $5,000, you stated then that it was a mere arbitrary charge between the companies. Today you stated that that storage charge or that that storage, or that amount was received on the basis of one one-hundredth of a cent per barrel per day. Is that true?

A. Yes, sir.

903 Q. Then you wish to correct this testimony, do you, when you stated that it was a mere arbitrary charge or basis, do you not?

A. What I meant was, it was an agreement between the Eureka Pipe Line Company and the Cumberland Pipe Line Company.

Q. That is what you meant?

A. Yes.

Q. On which you stated that it was an arbitrary charge?

A. No tariff charge.

Q. That is what you meant?

A. Yes.

Q. Have you ascertained since you left here yesterday how much you did actually receive from the Cumberland Pipe Line Company on that basis of one one-hundredths of a cent per barrel per day?

A. No, sir, but it would be only a few hundred dollars more than $5,000, I am quite sure.

Q. There is no way that that amount can be ascertained by you from Plaintiff's Exhibit No. 44, is there?

A. No, sir.

Mr. Avis: I request that that be furnished with the total amount received from the Cumberland Pipe Line Company under this arrangement that the witness has just testified to between the two companies.

Mr. White: Meaning for that period?

904 Mr. Avis: For the same period, covering the same period.

Q. Does your company at this time have a similar arrangement with the Cumberland Pipe Line Company?

A. Yes, sir.

Q. And you are still receiving storage charges from them, or so-called storage charges?

A. Yes.

Q. At the rate of one one-hundredths of one cent a day per barrel?

A. Yes, sir.

Q. That is true for all the time since July 1, 1919, is it not?

A. There may be one or two months that there would not be any, but that would be true if the conditions arose.

Q. What are the conditions that arise that authorize the Eureka Pipe Line Company making that charge against the Cumberland Pipe Line Company under that arrangement?

A. It is in order to get the oil out as fast as they can. It is an order that the Cumberland Pipe Line Company move the oil as fast as it can, and keep it moving, keep it going, and sometimes the producers in the Cumberland Pipe Line Company are not sold up as closely as at other times. The oil keeps pumping.

Q. And by that you mean that they do not consign or transfer their oil while it is in the lines of the Cumberland Pipe Line Company, and in order to make space for other oil that is con-

905 signed or transferred to go out, it is sent over in your lines to be held until such consignments or tenders or transfers are made, is that not true?

A. Yes, sir; I believe that is true.

Mr. Avis: I believe that is all.

Redirect examination.

By Mr. Crawford:

Q. The physical oil that is so sent over is not held, is it?

A. No, sir.

Q. Look at Plaintiff's Exhibit No. 44, and take the first item there

under the words "received from Cumberland P. L. Co. 321,123.03 barrels." What does that cover?

A. That indicates the amount of oil received from the Cumberland Pipe Line Company in July, 1918.

Q. You mean the number of barrels of Somerset oil?

A. The number of barrels of Somerset Oil, yes.

Q. Physical oil, is it?

A. Physical oil.

Q. It has nothing to do with the credit balance?

A. That is oil, physical oil.

Q. Take the item immediately opposite that in the third column, "Pumped by Morgantown 350,464.39." What does that mean?

A. That means physical oil pumped by Morgantown.

Q. You mean the number of barrels of Somerset oil, physical oil pumped at the Morgantown station where, in what direction?

906 A. Pumped east.

Q. Pumped east from Morgantown?

A. Yes, pumped east from Morgantown.

Q. And that is physical oil, is it?

A. Yes, sir.

Q. And is the same thing true of all the other figures in that column except that they represent the results in different months?

A. Yes, sir.

Q. And at the bottom the totals are entitled, first, the total amount of the physical oil received in the year from the Cumberland Pipe Line Company, and the other is the total amount of physical oil pumped in the same year out of Morgantown station eastward?

A. Yes.

Q. That is right, is it?

A. Yes, sir.

Q. And the monthly and daily averages are on the same principal, are they?

A. Yes, sir.

Q. And this total of 4,655,144.32 means that during the twelve months in question that amount of actual physical oil, that is Somerset oil, was pumped by the pumps at the Morgantown station through the eastward branch of your lines into the Southern pipe lines?

907 A. Yes, sir.

By Mr. Davis:

Q. Does not the Cumberland Pipe Line Company charge its producers who do not consign the oil a storage charge to offset the so-called storage charge paid by the Cumberland Pipe Line Company to the Eureka Pipe Line Company that you have been referring to?

Mr. Crawford: I object to that as immaterial and irrelevant and not within the issues of this case.

A. Yes, sir, at a slightly different rate.

Q. Higher or lower?
A. Higher.

Adjourned to Monday, December 8, 1919, at 10 A. M.

908 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et als.

New York, December 8, 1919.

Met pursuant to adjournment.

Appearances:

For the Plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.
For the Defendants: S. E. Avis, W. Gordon Mathews.

JOHN J. KENNEY recalled for further cross-examination:

By Mr. Avis:

Q. What is the total mileage of your system in West Virginia, including trunk lines and gathering lines?
A. About 4,300 miles, I think.
Q. And of that total mileage, about 500 miles constitute your trunk line system, does it not?

Mr. Crawford: You are not using the word "lines." Do you distinguish lines and pipes?
909 Mr. Avis: No, I refer to the system of what they call their trunk lines.

A. That would probably constitute the general system.
Q. That is the general trunk line system?
A. The general trunk line system.
Q. Were you here the other day when Mr. Swisher testified and stated that the storage capacity of the trunk lines was approximately 175,000 barrels of oil?
A. Yes, I believe I heard that.
Q. What lines do you understand were referred to when you state that the storage capacity of those lines was 170,000 barrels?
A. That referred to what we know as the discharge lines.
Q. The discharge lines?
A. Discharge lines.
Q. Will you please explain what you mean by discharge lines?
A. Those are lines through which we pump oil by pressure.
Q. That would be the lines, for instance, that extend from Tug River to Morgantown, and from Morgantown on to the Pennsylvania-West Virginia line, through which the Somerset Oil would go?
A. Yes, sir.

Q. That would also include the lines through which the Mid-Continent oil moves, as you stated, would it not?

A. Yes.

Q. Now, the other lines, or most of the other lines that
910 lead into these trunk lines contain oil at all times, do they not?

A. The branch discharge lines do, yes, sir.

Q. Now, what is the total storage capacity of your system of lines as distinguished from the storage capacity of your tanks, you having already given the storage capacity of your tanks, I believe, as being 1,500,000 barrels?

A. The storage capacity of our lines is about 170,000 barrels.

Q. That is all your trunk lines?

A. The trunk lines.

Q. I am referring to the other lines in which you keep oil?

A. I cannot give you that information.

Q. Do you recall that I requested that at a former hearing, Mr. Kenney?

A. I do not.

Q. Are you able to give us any idea of the quantity of oil in the pipes and tanks of the Eureka Pipe Line Company on the 30th day of June, 1919, or the first day of July, 1919?

A. I cannot, other than the discharge lines which I have just mentioned. The other lines are known as gravity lines and do not stand full of oil at all times.

Q. Would your records, that is, the records of your company, show the quantities of the different grades of oil in your system, inclusive of tanks, on the 30th day of June, 1919?

911 A. I do not believe they would other than the discharge lines.

Q. Do you mean to say that the company has no knowledge of the quantity of oil that is on hand at any given period either at the end of the fiscal year, or at any other period?

A. There is no record kept of the amount of oil contained in the gravity lines.

Q. I am not asking about the gravity lines, I am asking about tanks, about the whole system, gravity lines, trunk lines, and every other kind of lines?

A. Our record only pertains to the amount of oil contained in the discharge lines.

Q. When oil is delivered to you, either by a producer in West Virginia, or delivered to you by connecting carriers for transportation, there is a record kept of that oil, is there not?

A. Yes, sir.

Q. You have credit balances for that oil, have you not?

A. A credit balance account is kept with producers of oil in West Virginia?

Q. Don't you know at the end of the fiscal year the total quantities of oil that had been delivered to you for which you are accountable, and also the total quantities of oil which you have on

hand out of which to make deliveries of oil for which you are accountable?

Q. Yes, sir, our books would show that.

912 Q. Now, that is what I want to know, the quantity of oil of the various grades you had on hand June 30, 1919, and the quantities of oil that you were responsible for to the owners thereof at that time?

A. Our general books should show that, yes, sir.

Q. When do you give credit for oil, at the time it goes into your gathering lines or at the time it goes into your trunk lines?

A. The credit balance is issued under the date on which the oil is run from the producer's tanks.

Q. In other words, if I were a producer and delivered to you 500 barrels of oil from my well tanks, you would give me credit for that 500 barrels at that time, of course deducting the two per cent for evaporation and waste—that is true, is it not?

A. Yes, sir.

Q. I would like to have the information about which I have been inquiring as to your credit balances, and the amount of oil you had on hand on June 30, 1919, to be furnished to us at some time, to be filed with your deposition later on.

Now, I am not sure, Mr. Kenney, but what I have asked you this question, but I will ask you again: I understood your former answers to be that the Somerset-Cabell, the Corning and Mid-Continent oils, from Morgantown on, were handled or transported out of the same tanks and through the same lines, as distinguished

913 from the tanks from which, and the lines through which you transported the Pennsylvania grade of oil from Morgantown on?

A. No, I did not make that exact statement.

Q. What statement did you make in that respect?

A. I stated that the Mid-Continent, Corning, and Somerset-Cabell oils had their individual tankage. Also, the Pennsylvania crude oil has its own individual tankage——

Q. You mean at Morgantown?

A. Morgantown. The Mid-Continent, Somerset-Cabell and Corning oils are moved through the same pipes northeast of Morgantown to the Pennsylvania State line, where we connect with our connecting carrier, the Southern Pipe Line Company. The Pennsylvania crude oil is moved through two pipes, or in other words, the No. 1 system, through which there is no other grade of oil pumped.

Q. In other words there are two pipes for the Pennsylvania grade, and five lines of pipe for the other grades?

A. Yes, sir.

Q. And the other grades, namely, Corning, Somerset-Cabell and Mid-Continent move in columns, as you have described, through those five pipes?

A. Yes, sir.

Q. But out of different tanks?

A. Out of different tanks.

914 Q. Now, in connection with the questions I asked you a moment ago, you said you had no recollection of my requesting the capacity of your lines. If you will turn to page 129 of the testimony you will find that I asked you the capacity of your lines, and you answered as follows:

"I would be unable to answer that question without some reference.
Q. Will you supply that information later?
A. I probably can get it."

Thereupon Mr. Crawford remarked that he was perfectly willing that you should do so. He also said, "I don't want him to speculate in regard to it, but if there is a source of information which he can consult which will give it, I am perfectly willing that he should do so."

Mr. Crawford: What is the question, Mr. Avis?
Mr. Avis: A while ago I was asking him, among other things, the quantities of oil on hand and the storage capacity of his lines.
Mr. Crawford: Hasn't he answered the question?
Mr. Avis: No, he has not. He has answered as to the storage capacity of his trunk lines.
Mr. Crawford: He says he can't tell what the storage capacity of the gathering lines is, and I understand him to say that there is no way of telling.

Q. In connection with what I have just read to you about your testimony at the previous hearing, I now want to ask you if it is not possible by a mere process of calculation from the records of
915 your company for you or the company to ascertain the storage capacity of your entire pipe line system in West Virginia, including all lines?

Mr. Crawford: Including tanks, or not including tanks?
Mr. Avis: No, not including tanks. He has already answered that question about the storage capacity of the tanks being 1,500,000 barrels.

A. It probably could be ascertained but it would take a long time.
Q. Well, I don't want to put you to unnecessary trouble, Mr. Kenney, but I particularly want the quantities of oil of the different grades in your system, inclusive of tanks, on the 30th day of June, 1919?
A. We cannot arrive at the amount of oil contained in our gravity system.
Q. But you know what you are chargeable with, you know what you were chargeable with on the different grades of oil at that time, which would necessarily include the oil in your gravity pipes, would it not?
A. Yes, sir, the amount of oil we are chargeable with would include the oil in the gravity system.
Q. That is what I want in connection with the other?
A. That would be another matter altogether.

916 Mr. Avis: I want the storage capacity of the Pipe Line System of the Eureka Pipe Line Company, not including tanks (which the witness has already furnished) on the 30th day of June, 1919.

I also want the quantities of the different grades of oil handled by the Eureka Pipe Line Company for which it was responsible on the 30th day of June, 1919.

I also want the total quantities of oil of the different grades as of the same date, on hand, for which they were not responsible to any person, firm or corporation, but which would belong to the company itself.

Q. At the previous hearing I asked you to furnish the quantities of oil which had become contaminated during the year ended June 30, 1919, in the way you described such contamination by the movement of oil in columns. Are you prepared to give that information at this time?

A. I have a statement showing the number of columns; but as I stated at the time, it is impossible to approximate in any manner whatsoever the amount contaminated in that process.

Q. At the previous hearing I understood you to say that if you moved oils of different grades in one line of pipe, you called that one column?

A. No, one column might be moved through two pipes.

Q. I understand, and it might be moved through five pipes
917 at the same time?

A. Yes, sir.

Q. But if it moves through one, two or five pipes, you call it just a column, don't you?

A. If a different grade of oil, yes, sir.

Q. Now, when you furnish the number of columns of oil moved, you treat it as one column if it moves through one pipe, and still treat it as one column if it moves through two pipes, and you still treat it as one column if it moves through five pipes?

A. If they were all in one system, yes, sir.

Q. Well, you would, for instance, call the moving of the Mid-Continent oil from Morgantown to the Pennsylvania lines through those five pipes—you would call that one column?

A. Yes, sir.

Q. Although there would be more contamination in moving through the five pipes than there would be if you were moving it through one pipe?

A. Possibly, yes, sir.

Q. Probably five times as much, would it not?

A. Possibly.

Q. Now, in furnishing the number of columns, you are unable to say whether this oil moved in one pipe constituting a column, two pipes, constituting a column, or five pipes constituting a
918 column, are you not?

A. The columns that I have testified in regard to move in single pipes, and some in double pipes, and as high as the five pipes that move out of Morgantown, northeastwardly.

Q. But, as I say, when you furnish the number of columns of oil handled by your company for the year ending June 30, 1919, you call it one column if it moves through one pipe, you call it one column if it moves through two pipes, and you call it one column if it moves through five pipes, do you not?

A. Yes, sir.

Q. Will you now produce the paper showing the number of columns?

A. I now produce a statement showing the different columns of crude oil handled by the Eureka Pipe Line Company, beginning July 1, 1918, and ending June 30, 1919.

Q. I note on that statement that during that period you handled twenty-five columns of Pennsylvania grade of oil from Hamlin to Elm Run. Is that true?

A. Yes, sir.

Q. Through how many pipes did those columns go?

A. For most of the distance it went through two pipes; for a short distance it went through three.

Q. And for part of the distance through one, did it not?

A. No, sir.

919 Q. I note that for the same period you handled sixteen columns of Corning oil from Eureka to Braden. Through how many pipes did that oil move?

A. That oil moved through two pipes.

Q. I note on this statement that you handled nine columns of Corning oil from Morgantown to the Pennsylvania State line?

A. Yes, sir.

Q. Through how many pipes did that go?

A. Through five pipes.

Q. I notice from the same statement that you handled twenty-seven columns of Somerset-Cabell mixture from Morgantown to the Pennsylvania State line?

A. Yes, sir.

Q. Through how many pipes did that go?

A. Through five pipes.

Q. I notice from the same statement that you handled twenty-eight columns of Mid-Continent oil from Morgantown to the Pennsylvania State line. Through how many pipes did that oil go?

A. Through five pipes.

Q. I notice from this statement the following totals: twenty-five columns from Hamlin to Elm Run; sixteen columns from Eureka to Braden; sixty-four columns from Morgantown to the Pennsylvania State line. Is that correct?

920 A. Yes, sir.

Q. Now, if the movement of oil through one line of pipe would constitute a column, then if the oil were moved through five pipes, it would be five times as many columns, would it not, actually?

A. If, as you say, the movement of oil through one pipe constituted a column, that would be correct, yes, sir.

Q. And approximately the same amount of contamination occurs in the movement of oil through one pipe as it does through another of the same size, does it not?

A. I would think so, yes, sir.

Q. Mr. Kenney, assuming that the total of 105 columns shown on the statement that you are referring to, had been handled in one line of pipe instead of, as in some instances, two, in other instances three, and in other instances, five, lines of pipe, what would be the total number of columns of oil handled?

A. I regard as one column——

Q. That is not responsive, what you regard. What I am asking you is to give us the total number of columns of oil handled by your company during the period ending June 30, 1919, if it had been handled in one line of pipe, instead of one, two or three or five, as you have stated?

Mr. Crawford: I object to the question as being specula-
921 tive, and not based upon any testimony in the case.

Mr. Avis: I do not think the question is speculative. I take it that, from the witness' previous answers, as to the quantity of oil contaminated by the movement in a column, that it is a matter of which the witness has knowledge or which he can approximate by calculation?

A. If it was assumed that the movement through one pipe constituted a column, then that would show more columns than are indicated on that list.

Q. For instance, you show that of the Corning, Somerset-Cabell mixture and Mid-Continent grades of oil, a total of 64 columns moved from Morgantown to the Pennsylvania State line. You have stated that that oil moves through five lines of pipe?

A. Yes, sir.

Q. Assuming that the movement through one line of pipe from Morgantown to the State line constituted one column, then you would multiply the 64 by 5, would you not, making 320 columns?

A. Yes, sir, if I so assumed.

Q. And the same method of arriving at the number of columns would be applicable where it moved through two or three pipes respectively, would it not?

A. Yes, sir.

Q. Now, on this statement where you show a total of six-
922 teen columns from Eureka to Braden, I believe you stated that went through three pipes?

A. Three pipes.

Q. Then that would constitute, on that assumption, 32 columns?

A. Yes, sir, on that assumption.

Q. Now, on the same assumption, on the movement of oil from Hamlin to Elm Run, part of which was through one line, and part through two or three lines?

A. Through two lines for most of the distance, and through a third line for a short distance.

Q. Well, on the same assumption, how many columns would the twenty-five columns shown on this statement amount to?

A. Taking the two pipes it would be double that amount.

Q. Now, we don't know just what distance it moved through two

pipes and what distance it moved through three pipes. About how many columns would it amount to, on the assumption that I am proceeding on in these previous questions?

A. On your assumption it would amount to, I presume, three times the amount shown there.

Q. In other words, seventy-five columns?

A. Yes, sir.

Q. Now, on the same assumption, the total number of columns handled by your company would amount to 75 from Hamlin
923 to Elm Run, 32 from Eureka to Braden, and 320 from Morgantown to the Pennsylvania State line, would it not?

A. Yes, sir, on that assumption that would be correct.

Q. On the same assumption the total number of columns would be 427, would it not?

A. Yes, sir, according to that assumption that is correct.

Q. Is there any way to move oil by following the column of oil with water?

A. No, sir, it is never done except for repairs.

Q. It can be done?

A. It is impracticable, and is only done where it is absolutely necessary. We sustain a loss of some amount by so doing.

Q. But you avoid a contamination, do you not, you avoid a contamination of the different grades of oil where you do move it by water?

A. We don't pump water where there is more than one column in a pipe.

Q. It could be done, couldn't it?

A. I don't think so.

Q. Now, suppose that you had, we will say, nothing but Pennsylvania grade of oil in your pipe line system, and you wanted to avoid any contamination or mixture of that oil with another grade
924 of oil, couldn't you throw a column of water behind that Pennsylvania grade of oil and take it out of the pipe line system?

A. No, sir, I don't think it could be successfully accomplished.

Q. I am not asking you whether it could be successfully accomplished, I am asking you whether it could be done?

Mr. Crawford: I object to that because the counsel's question assumes that the thing is commercially and in an engineering sense, possible.

Mr. Avis: I am not assuming any such thing, being commercially possible. I am asking the question whether it is possible.

Mr. Crawford: You mean that in an engineering sense?

Mr. Avis: I don't know whether that would come in in an engineering sense, or not. I am asking about the physical possibility of it.

Mr. Crawford: I object to the question as speculative, and containing an hyopthesis not based upon any testimony in the case, or upon any known scientific facts, and as incompetent.

Mr. Avis: The witness just said that in some instances they do use water.

Mr. Crawford: He said he used it for the specific purpose of——

Mr. Avis: I understand, and I am asking whether it could
925 not be used for another purpose?

The Witness: No, sir, I don't think it could.

Q. Well, why couldn't it?

A. Because it is impracticable.

Q. Why is it impracticable?

A. The contamination of water would be greater than any other contamination.

Q. Do oil and water mix?

A. There is a certain amount of water that would remain in the lines and would not move out as it should.

Q. I ask you the question whether it would mix with oil?

A. Oil and water are supposed not to mix.

Q. Well, do they, from your knowledge of the business?

A. They mix to some extent, just the same as an emulsion. The water will stand in the oil where the density is great.

Q. It is easily eliminated, isn't it, and separated from the oil?

A. No, it is not easily eliminated.

Q. You say that sometimes you use water. When is it that you use water?

A. For repair work.

Q. How do you use it for repair work?

A. We place the water in the pipe to clear out as far as
926 possible the oil in that pipe.

Q. And that takes the oil as far as possible out of the pipe?

A. Well, it partially does.

Q. Well, it takes it more completely than if you used another oil to take that same oil out?

A. I don't know that it does.

Q. Now do you use the water under those circumstances, if you want to repair a pipe?

A. We place water in the pipe——

Q. Behind the oil?

A. Yes, sir.

Q. And that forces the oil where to?

A. It forces the oil through the lines into some point beyond.

Q. Wherever you want to put it, does it not?

A. To the next nearest point, yes, sir.

Q. Then after you repair the pipe what becomes of the water?

A. The water is forced out by the oil moving behind it through the pipe.

Q. That is another column of oil—I mean the column of oil behind the water is a different column from the column of oil ahead of the water, is it not?

A. The same grade of oil.

927 Q. I am not asking about the grade of oil, it is different physical oil, is it not?

A. It is different physical oil, but it is always the same grade of oil.

Q. Now, when the water goes out what course does it pursue? In other words, if there is a column of oil of the Pennsylvania grade in the pipes, and you want to make repairs to those pipes, as I understand it, you put in water behind that oil, do you not?

A. Yes, sir.

Q. And the oil goes to the next convenient place that you desire it to go to, forced there by the water?

A. Yes, sir.

Q. It goes into tanks, does it not?

A. Yes.

Q. The oil that is ahead of the water?

A. Yes, sir.

Q. Now, what becomes of the water?

A. The water stands in the pipes.

Q. Then you follow that up, say, with another column of Pennsylvania grade of oil, and that forces the water out of the pipe?

A. Partially, yes, sir.

Q. Where does that water go to?

A. Well, it usually goes into a tank.

Q. In the same tank with the oil that is ahead of it?

928 A. Not necessarily.

Q. Then you can separate the water from the oil, and put the oil that is ahead of it in one tank, and put the water that is behind that oil in another tank, can you not?

A. To some slight extent. The water will still be coming along for a considerable time after it should be out of the pipe.

Q. I understand, but where does the water go to that you get out of the pipe?

A. It goes into our tank.

Q. Well, it goes into a different tank, or you attempt to put it in a different tank from that in which the oil ahead of it goes?

A. We endeavor to put it in some tank other than the tank that we are using for the oil.

Q. And then, of course, you let it run out of that tank after it is separated?

A. It is drawn out at some time.

Q. Well, you say that of the column of water following the oil ahead of it, some of it remains in the lines, is that true?

A. Yes, sir.

Q. Now, isn't that also true in this instance, that if a column of Pennsylvania grade of oil were in the line, and you wished

929 to force that along with a column of Somerset-Cabell oil, some of that Somerset Cabell oil would remain in the lines too, would it not?

A. Not to any great extent.

Q. But some of it would?

A. Very little of it.

Q. Well, contamination as a result of those two columns would stay in the line, would it not?

A. It is the result of the mixing of oil between the two columns, yes, sir.

Q. Do you mean to say as an expert on this matter, that it is more difficult to get the water out of the lines than it is to get the oil out?

A. I do.

Q. Now, you cannot approximately give us the quantities of oil contaminated by moving it in one column, as you have heretofore described, for the period of twelve months ending June 30, 1919, is that true?

A. Yes, sir, that is true, I cannot do so.

There is one statement I would like to make. I think I was asked with reference to Mid-Continent, if it came in contact with any other oil while in the possession of our company. I think I said it did not. I was particularly referring to and had in
930 mind the movement of that oil into our Morgantown station. Of course it does come in contact with the Somerset-Cabell oil, and the Corning oil leaving Morgantown. That is a little correction I wish to make.

By Mr. Crawford:

Q. You mean as one column follows another?

A. Yes, sir.

By Mr. Avis:

Q. Through those five lines of pipe that you referred to?

A. Yes, sir.

Q. In your previous testimony you describe how the Somerset-Cabell oil became mixed?

A. Yes, sir.

Q. And you also described how the Corning and the Somerset-Cabell went through the same lines of pipe before reaching Morgantown?

A. Yes, sir.

Q. In giving us the information that you have given as to the number of columns of oil handled by your company, we will say, for instance, from Eureka to Braden, where you gave the total number of columns as sixteen, now, there would be a mixture of columns of that same oil from Morgantown to the Pennsylvania State line, as you have described, would there not?

A. When the Corning oil moves through in a column, yes, from Morgantown northeastward.

931 Q. Now, there would be one mixture, we will say, with Corning and the Somerset-Cabell, before it reached Morgantown, in columns, would there not?

A. Yes, sir.

Q. You would call that one column?

A. Yes, sir.

Q. Where that same oil moves from Morgantown to the Pennsylvania State line there would be another mixture of the columns?

A. Yes, sir.

Q. Now, in the figures that you have given me as to the number of columns, do they include those two mixtures of that Corning oil?

A. Yes, sir.

Q. In other words, if there were one mixture from Eureka to Braden, it would be shown in the figure 16?

A. Yes, sir.

Q. And if there were another mixture from Morgantown to the Pennsylvania State line, it would be shown in the total figures of 64, would it not?

A. Yes, sir.

Mr. Avis: That is all.

Redirect examination.

By Mr. Crawford:

Q. The various columns that you have been testifying
932 to, whether they be considered as passing through a single pipe or through several pipes simu'taneously, are handled over very different distances, are they not?

A. Yes, sir.

Q. For example, the columns of oil that leave Morgantown and go to the junction of your line with the Southern, whether it be considered—I am speaking of System No. 2—whether it be considered as five columns or one column, are handled for a distance of about twelve miles, isn't that so?

A. Yes, sir.

Q. From Eureka to Braden, the 16 columns that you testified to of Corning oil, those pass over how far?

A. About thirty-one miles?

Q. And the columns that you specified as passing from Hamlin to Elm Run, how far do they pass?

A. Between 83 and 84 miles.

Q. Is there any relation between the distances which columns travel in regard to the amount of contamination that ensues? I mean, of course, not the actual amount, but the relative amount?

A. There is more contamination, or supposed to be more, in a greater distance.

Q. If you force water through pipes behind oil under pressure, does not some mixture of the oil and water ensue?

A. Yes, sir.

933 Q. There is no difficulty in mixing water and oil under pressure, is there?

A. No, sir.

Q. No difficulty in making them mix by shaking them together, is there?

A. No, sir.

Q. Is that resulting mixture regarded as a good thing, or otherwise?

A. It is regarded as being a very difficult matter with us.

Q. I didn't ask you whether it is a difficult matter, I asked you whether it is a good thing. I mean, is it detrimental, or is it a matter of indifference?

A. It is detrimental.

Q. Why?

A. Because it is a very hard matter, if at all, to get the water separated from the oil.

Q. What do you want to get the water separated from the oil for?

A. Well, any oil containing water is particularly undesirable to the consignees.

Q. You mean to the refiners?

A. Yes, sir.

Q. Where oil travels through your gathering lines by gravity, does it not often happen that the gathering lines are —

934 nearly so?

A. Yes, sir.

Q. Is not this the fact, that the moment you stop pouring oil in at the top gravity will carry the oil down here and practically empty the line?

A. Yes, sir.

Q. So that it may be true that a large part of your gathering lines at any given time are practically empty?

A. Yes, sir.

Q. When you said that your trunk lines amounted to 500 miles, did you mean by that 500 miles of pipe or 500 miles of lines, whether composed of one or more pipes, parallel pipes?

A. That would probably be a close estimate of the amount of lines, not pipes.

Mr. Crawford: That is all.

Recross-examination.

By Mr. Avis:

Q. You stated that any oil mixed with water is particularly undesirable to the refiner, I believe?

A. Yes, sir.

Q. Well, any superior or higher grade of oil mixed with an inferior grade of oil, such as Corning, or Somerset-Cabell, or Mid-Continent, would be more undesirable to the refiner, wouldn't it?

A. I think not.

935 Q. Well, would not any higher grade of oil mixed with inferior oil be undesirable to the refiner?

A. I presume it would, yes.

Q. Don't you know it would, Mr. Kenney?

A. I am not acquainted particularly, or in any way, with the refining business.

Q. Then you don't know whether or not a grade of oil mixed

with water would be more undesirable, or less desirable, to the refiner than a higher grade of oil mixed with the lower grades of oil, such as Mid-Continent?

A. I know that it is very undesirable for water to be mixed in with oil, when put into the refining stills, on account of the possible danger of explosion. I don't know to what extent the mixture or contamination between two grades of oil affects them.

Q. And you don't know whether the refiner would prefer to have his Pennsylvania grade of oil mixed with water, or whether he would prefer to have it mixed with Mid-Continent oil, do you?

A. I don't know, but I am inclined to think he would rather have it mixed with the lower grade of oil.

Q. But you don't know?

A. No.

Deposition closed.

Signature of witness waived by consent.

936 FORREST M. TOWL, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Crawford:

Q. Where do you live, Mr. Towl?

A. Shelter Island Heights, and Brooklyn, New York.

Q. Well, your permanent residence is Brooklyn, is it not?

A. My legal residence is Shelter Island Heights. I am there in the summer and in Brooklyn in the winter.

Q. You are President of the Eureka Pipe Line Company, the plaintiff in this action, are you not?

A. I am.

Q. Are you an engineer by profession?

A. Yes, sir.

Q. Civil engineer?

A. Yes, sir.

Q. Where were you educated?

Q. Cornell University.

Q. Did you there take an engineering degree?

A. I took the Degree of Civil Engineer.

Q. In what year?

A. In 1886.

Q. Will you state generally what your experience in connection with the pipe line business has been, without special reference to the Eureka Pipe Line? I mean, from the standpoint of engi-

937 gineering?

A. I started in pipe line work in 1879 and 1880. After I had been about two years in the work I saw that it would be much better for me to get an engineering education, so I entered Cornell University, and graduated in 1886. I worked at pipe line surveys during my summer vacations all the time I was in the University.

On my graduation I connected myself with the Engineering Department of the National Transit Company, and other pipe lines. I have been continually in the work in connection with pipe lines and the transportation of gas ever since that time. I have also been connected with other engineering work.

Q. Have you constructed pipe lines or superintended the construction of them?

A. I have.

Q. What part, if any, of the pipe lines of the Eureka Pipe Line Company were constructed under your direction?

A. I was in the engineering department at that time, and made the computations for the building of the line from Morgantown east at the time it was built; and I was also on the surveys, and laid out and assisted in the location of the stations, practically located most of the stations.

Q. Did you as an engineer have anything to do with the construction of the lines of the Southern Pipe Line Company?

A. Yes, sir, I continued the same survey on to the lines of
938 the Southern.

Q. Take the system of the Eureka Pipe Line Company, have all the pipes composing that system as it now stands been built at one time?

A. No, sir.

Q. Take first the gathering lines, have they grown, and if so, for what reason?

A. It has been a gradual reaching out to take care of the production of wells as they came in.

Q. That is to say, whenever oil is discovered in a new section your company extends gathering lines to the wells of the owners to take care of it?

A. If they indicate that they will let us take charge of it. That is, we ask them, as soon as we hear of the wells, if we will run our lines over to their wells they will run their oil into our lines. It is usually a mutual arrangement. They are after us to take care of it and we are after them to get the business.

Q. But the net result is that your gathering system has spread gradually in different directions over various parts of West Virginia?

A. Yes, sir.

Q. And through a considerable period of years, has it not?

A. Yes, sir.

939 Q. When did you become president of the Eureka Pipe Line Company?

A. The latter part of November, 1911.

Q. Prior to that time the system of the Eureka was in full operation was it not?

A. Yes, sir.

Q. Has it been enlarged any since then?

A. Yes, sir.

Q. How long prior to 1911 had you been acquainted with it as an engineer?

A. Since it was organized.

Q. That was about 1891?
A. About 1890 or 1891.
Q. So that you are reasonably conversant with the way the system has grown from the beginning?
A. Yes, sir.
Q. You have heard the testimony of Mr. Kenney in regard to the way in which it had grown progressively from the northern part of the State to the southern part of the State?
A. Yes, sir.
Q. You agree with that, do you, substantially?
A. Substantially.

Mr. Crawford: I do not want to take time to go over the details of the whole of it again.

940 Mr. Mathews: And I am not going to make any formal objection if I can avoid it.

Q. Is it also true that along the same stretch of your system the capacity is increased by the addition of more pipes?
A. The capacity has increased by putting in what we call loops, or adding complete new lines from place to place.
Q. Has that been true with the Eureka in a general way?
A. Yes, sir.
Q. Both before and since you became president?
A. Yes, sir.
Q. These five pipes that have been referred to as extending from Morgantown to the lines of the Southern, and which are used alternately for the various grades of oil other than the Pennsylvania grade—were there five of them at the outset?
A. No, sir.
Q. How many?
A. One.
Q. At the very outset there was only one out of seven, was there not?
A. One out of seven.
Q. And that increased from time to time?
A. Yes, sir.
Q. Why, why did you lay more pipes?

A. It was part of a looping system to increase the capacity
941 from Morgantown to the Atlantic seaboard.

Q. What do you mean by a looping system?
A. If we have a line between two points and we want to double the capacity, we would put another line in, that would be a second line. If we only wanted to increase the capacity 40 or 50 per cent, we would not put the second line all the way through, we would put it part of the way. That would be called a loop.
Q. Now, the growth in the number of pipes at different points along the system, has that been simultaneously, or has an increase taken place at one point at one time and at another point at another time?

Mr. Mathews: I assume all your questions are relating to the Eureka Pipe Line Company?

Mr. Crawford: Thus far.

A. It has been a gradual growth, putting in new lines as required.

Q. That does not quite answer my question. The question is, the growth in the number of pipes at different points along the system, has that been simultaneously, or has an increase taken place at one point at one time and at another point at another time?

A. If the looping between two sets of stations were needed
942 to accomplish a certain result it would go in at one time. If it was not needed to accomplish a certain result it would go in at separate times. Sometimes it is necessary to increase the capacity of six or seven stations at one time to get the results.

Q. But the increase in the capacity involving an increase in the number of pipes has been treated always as an engineering question, hasn't it?

A. As an engineering problem.

Q. Now, speaking as an engineer and as an expert in respect to the construction of pipe lines, has what you have said in regard to the system of the Eureka Pipe Line Company taken place also in regard to other systems with which you have been connected as an engineer?

A. Yes, sir.

Q. Is that the same, in a general way, as to the lines of the Southern Pipe Line Company?

A. What I have said in reference to the Eureka would apply to the Southern, except that the Southern has no gathering system; there would be no extensions to the wells.

Q. But I mean to say as far as the trunk lines are concerned?

A. Yes, sir.

Q. The increase in the number of pipes at different points has been treated as an engineering question at those points,
943 and such increase has not taken place simultaneously at all points along the line, that is right, is it not?

A. Yes, sir.

Q. Now, one of the witnesses was asked about the number of pipes in the Southern Pipe Line, or at least in that part of it which is near the westerly terminus or junction with the line of the Eureka Pipe Line Company. I will ask you about the number of pipes that there are in the Southern system along that stretch?

A. Seven pipes from Morgantown to the State line, and from there, the junction of those separate pipes, the Southern Pipe Line Company has pipes of the same size extending for several miles east of that point. Then the number of pipes change at different points along that line. In some places there are seven, in some places there are three. I do not know whether there is any place where there are two or not.

Q. Assuming for the present that the number of pipes vary from seven to three, are they all of the same calibre?

A. No, sir, the Southern Pipe Line is composed of pipes of 6 inch internal diameter, and pipes of 8 inch internal diameter.

Q. Where you get down to three pipes what is the fact about the calibre there?

A. It is an engineering computation. They may be all 6
944 inch pipes; they may be all 8 inch pipes; or they may be part 6 inch and part 8 inch.

Q. Why does such a condition exist? I am asking you as an engineer?

A. The lines were not increased at one time. The original line was supposed to handle something like 10,000 barrels a day, and it was increased and lines were put in. The lines were computed so as to require a minimum expenditure considering the possibilities of future extensions, and it sometimes required the use of 6 inch pipe, and sometimes required the use of 8 inch pipe.

Q. Is there any engineering reason for having seven pipes from Morgantown to the State line, or for having five pipes in System No. 2 between those points?

A. It was the number shown by computation to be necessary. If the plant was to be replaced by a new plant the same result might possibly be derived in a different manner. It is probable that if the plant as a whole, the Eureka and its connection with the Southern, was to be built over again, that there would still be seven pipes from Morgantown. The hills east of Morgantown are very high, and it requires a high pressure on the pipe. A 6 inch pipe is safer with a pressure of 900 pounds to the square inch than an 8 inch pipe would be. The 8 inch pipe might stand the pressure of 900 pounds but I should not consider it safe.

945 Q. That is due to the fact that the area of the transverse section of an 8 inch pipe is much greater than that of a 6 inch pipe? I mean to ask you first whether the area of one is not much greater than the other, and secondly whether that is not the reason for what you have just stated?

A. The area is of course greater. The diameter enters into the engineering computation.

Q. Can you tell me what the difference in the number of square inches in the transverse section of an 8 inch pipe is as compared with the same thing in a 6 inch pipe? If you cannot tell me exactly, can you tell me the proportion?

A. As 36 to 64.

Q. One is very nearly double the other, is it not?

A. Yes, not quite.

Q. Is what you mean by the pressure, that the pressure being 900 pounds to the square inch, it would bring to bear upon the walls of an 8 inch pipe going up these mountains, nearly double the pressure?

A. No, sir.

Q. Well, a greater pressure at any rate?

A. If the pipe had the same thickness of walls it would be directly as the diameters. It would be 6/8 or 3/4.

Q. Then you mean that the pressure upon the walls would
946 be one third greater in an 8 inch pipe than in a 6 inch pipe?

A. Yes, sir.

Q. And as an engineer you do not think that would be safe?

A. It would not have the same factor of safety.

Q. But as a matter of fact I understand you to say that this line of seven pipes from Morgantown to the State line has grown to that number?

A. Yes, sir.

Q. Well, is not directly in line with my principal examination, but it is suggested by what I have been speaking of, and I call your attention to a question that was asked of one of the former witnesses as to why, in transporting oil from Morgantown through System No. 2 to the pipes of the Southern at the State line, those five pipes could not be divided so as to carry Mid-Continent oil with two pipes, and Somerset-Cabell oil through the remaining three at the same time, instead of using the five pipes for one, and then all five pipes for another. I think I correctly state the question——

A. As far as those five pipes in the Eureka are concerned it could be done, but——

By Mr. Mathews:

Q. It can be done?

A. They could be used separately, each pipe could be used separately as far as the pipes in the Eureka Pipe Line are concerned, but their only outlet is through the pipes of the Southern Pipe
947 Line Company, and at some points the Southern Pipe Line Company has only three pipes. That would limit the amount of oil that could be handled by the entire system to three kinds. If that was to be done it would greatly reduce—if it was divided into three systems it would greatly reduce the total capacity of the three systems, the total capacity would be considerably less than the total capacity of the two systems, for engineering reasons.

By Mr. Crawford:

Q. Experience has shown, has it, that the largest amount of oil in the aggregate can be moved by operating on your present plan?

A. No, sir, we could get a larger amount through if we put everything in together regardless of kind and quality.

Q. But, assuming the necessity of keeping the Pennsylvania grade by itself, and of keeping the other three grades as separate as possible, has experience shown that the present plan of using the five pipes simultaneously for one grade, and then changing to another, results in moving the largest quantities?

A. That has resulted in moving larger quantities with greater satisfaction to our patrons.

Q. Now, there seems to be a good deal of irregularity in the number of pipes in other parts of your trunk lines. As I gather
948 from the testimony of Mr. Kenney, there are some stretches between Tug River and Morgantown in which there are two pipes, some in which there are three pipes, and short distances apparently in which there are four pipes. How does that come about?

A. It is the result of engineering computations for handling the amount of oil that is going through those lines. The oil coming in

at various points varies in amount, it is a progressive increase all the way up to Morgantown. There is oil coming in all the way from Hamlin nearly up to Morgantown.

Q. Have those pipes also been built at different times? I mean, has the capacity been added to irregularly, as you testified a little while ago?

A. Yes, sir.

Q. And you have met the particular demand of the moment, have you, by making an increase at some one point?

A. Yes, sir.

Q. Without reference to whether you increase it at other points or not?

A. Yes, sir.

Q. That is purely an engineering proposition, is it?

A. Purely an engineering proposition.

Q. When you come to go down-hill in a pipe line isn't there a difference there in the number of pipes required?

949 A. Often going down-hill requires a less number of pipes. Sometimes it requires the same number of pipes. It is an engineering proposition dependent on the contour of the country, the grade of the country, and the amount of oil you are moving through the lines.

Q. A great deal has been said in the case thus far about the contamination resulting from different columns of oil following one another. Is that a new question, or have you known of it before?

A. That is a question that has been very prominent among pipe line people ever since they commenced to handle more than one kind of oil.

Q. Has that been recognized throughout the history of pipe lines as an evil that had to be handled in the best way possible?

A. Yes, sir.

Q. What has been, generally speaking, the means employed by pipe line companies to lessen that trouble?

A. Separating the different kinds of oil as far as practicable into different lines, and not permitting it to flow into tanks where is stored oil of a different kind; and when that is not possible to separate it into lines of different kinds, to keep the tanks separate if possible, and to move the oil in columns, one kind of oil replacing the other.

Q. Has any attention been paid to the amount of the ship-
950 ments at one time?

A. Yes, sir, growing out of our general practice in handling oils of various kinds through different systems of lines there has been established an amount which would be handled by the different pipe lines from different points.

Q. Prior to asking the exact amount that may be adopted for the purpose you speak of, how long, to your knowledge, has that general plan of only using very large shipments of the same kind of oil been employed? I do not mean merely in the Eureka, but I mean in the pipe line business?

A. Ever since the handling of different grades than Pennsylvania grade by the pipe lines.

Q. I want of course your knowledge. I do not want you to tell about something that somebody told you, but from your experience how far back does that go?

A. I cannot give the actual date when the Lima oil field was developed. That was an entirely different nature of oil, it was handled in large batches and kept separate.

Q. That was in the early nineties anyway, wasn't it, or earlier? It was at least as early as the early nineties, was it not?

A. I think so.

951 Q. Well then at least from as early as the early nineties that general custom of shipping in large batches has prevailed, has it?

A. Yes, sir.

Q. Generally in the pipe line business?

A. Yes, sir.

Q. Has it become recognized by pipe line engineers as the best method available in connection with the other things you have mentioned to lessen contamination?

Mr. Mathews: I object to that question, as the witness has not indicated that the amounts adopted for shipment from time to time bear directly upon the question of contamination.

A. Yes, sir, where it is necessary to handle the oil through the same system of pipes. Of course if you can handle it through separate system that is still better.

Q. You heard Mr. Kenney testify that the amount of contamination resulting from the impact of the head of one column of oil upon the rear end of another column would be about the same, whether the columns were large or small, did you not?

Mr. Mathews: I object to that because counsel's recollection is that the witness Kenney qualified and explained the statement to this effect, by saying that the mileage involved in a given shipment had a direct bearing upon the same problem.

Mr. Crawford: I will withdraw the question.

952 Q. What is the fact as to whether if you were moving two columns of oil of different grades through the same pipe or pipes simultaneously, over a given distance, and in the one case the columns consisted of 10,000 barrels each, and in another case consisted of 100,000 barrels each, would there be any difference in the amount of contamination which would result at the points of junction between the two columns?

A. The actual mixing or contaminating of the two kinds would be the same, provided in both cases there was sufficient of the oil put in to entirely replace all of the oil that became mixed.

Q. Then what effect upon the percentage of contamination, if any, does the increase in the amount of the shipment have?

A. If the percentage was based on twice the amount there would be one half the percentage.

Q. Then in the case that I gave of 10,000 and 100,000 barrels, and assuming that there was enough oil to meet the condition that you

mention, the percentage of contamination in the 100,000 would be one tenth as much, or approximately that, as upon the 10,000—is that what you mean?

A. Yes, sir.

Mr. Mathews: I object to that question and answer as being misleading on its face, and impossible to determine what is the actual amount by the percentage of contamination.

Q. Counsel thinks that my question and your answer are not clear. I am very anxious to make them clear, so I will ask you an-
953 other question. If in moving two columns of different grades of oil, each of 10,000 barrels, over a given distance, the resulting contamination between the two columns was 1,000 barrels; and if you then increased those columns, or took two columns of 100,000 barrels each, moving them over the same distance under the same pressure, would you expect to get 1,000 barrels of contamination?

A. Yes, sir.

Q. Then what effect on the percentage of contamination results from moving large batches of oil as contrasted with small batches, through the same pipe and for the same distance and under the same conditions?

A. Under the same conditions the percentage on the larger batches is considerably less than the percentage on the smaller.

Q. How long has that fact been known to pipe line engineers, to your knowledge?

A. Ever since we moved the first column. We knew that before.

Q. Is it true, at any rate, ever since you have been connected with the pipe line business as an engineer, is it true that that fact has been known since that time, and if not, since when?

A. Yes, I think it has been known ever since it was contemplated to move various kinds through the same lines.

954 Q. Well, that has been true for many years, hasn't it?

A. Yes, sir.

Q. What do you say is the reason, or what are the reasons why pipe line engineers approve of moving oils of different grades in large batches when necessary to move them in the same pipes?

Mr. Mathews: That question and answer is objected to as leading and suggestive, as not based upon testbmony of this witness that the prevention of contamination is the purpose of prescribing large batches to be moved at a given time, and as directly in conflict with the evidence already introduced by the plaintiff consisting of tariffs and oral evidence showing that the established custom at many places is and has been to permit shipments of batches of oil, not only in relatively small, but actually small quantities.

Mr. Crawford: I will withdraw that question and try again.

Q. Is it a fact that pipe line engineers generally favor the movement in large batches where it has to be moved through the same pipes?

Mr. Mathews: I make the same objection.

A. Yes, sir.
Q. Why, what is the reason for that opinion?
A. Because it enables them to get a larger percentage of clear oil through and give better service to their patrons.
955 Q. Has that been the case for many years, I mean as a matter of opinion of engineers, and the reason for it?

Mr. Mathews: I make the same objection.

A. That has been the case, and all of those amounts in our tariff are based upon practice prior to placing those amounts in our tariffs. The amount varies at different points. There are reasons why the amounts put in the different tariffs are as they are.

Q. And those are engineering reasons, are they, or technical reasons?

A. They are practical reasons depending upon the construction of the lines through which oils are to move, and the kinds of oil to go through the lines.

Q. Upon a number of the tariffs of your company the amount of the shipment required to be made from Morgantown, or, the minimum amount, is 75,000 barrels?

A. Yes, sir.

Q. On shipments going eastward to the lines of the Southern?

A. Yes, sir.

Q. Is there any corresponding regulation of the Southern Pipe Line Company as to the amount that it will receive?

A. The Southern Pipe Line Company originates no tariffs on which oil is moved. They have one tariff naming certain
956 conditions under which they will handle the oil. They concur in the tariffs of the Eureka Pipe Line and other connecting carriers in the conditions, and the conditions are arrived at by conference.

Q. Have you taken part at different times in conferences between representatives of different connecting carriers, with a view to determining certain points to be covered by the tariffs.

A. I have.

Q. In regard to this very question of the minimum amount of shipments—has that been a matter of conference between representatives of different carriers?

A. Yes, sir.

Q. Has this particular item of 75,000 barrels for shipment eastward from Morgantown been a matter of such consideration?

A. Yes, sir.

Q. What carriers have conferred, or the representatives of what carriers have conferred in regard to that?

A. All carriers moving oil through Morgantown.

Q. Do you mean all to the east of you?

A. All to the east, and to the west.

Q. Taking first the oil that originates in West Virginia, that would include the Eureka Pipe Line Company, and the Southern Pipe Line Company, and what others?

957 A. The Eureka, the Southern, the National Transit Company, the Tuscarora Oil Company, and the Maryland Pipe Line.

Q. All of them have been consulted, have they, in fixing that amount of 75,000 barrels at Morgantown?

A. Yes, sir.

Mr. Mathews: The preceding question and answer are objected to as improper and irrelevant, and a motion made to strike out the answer.

Q. I notice that in a number of the tariffs in evidence which have been filed by the Prairie Pipe Line Company in conjunction with your company and other carriers there is a similar regulation, to the following effect:

"Third. It will forward such crude petroleum when there has been tendered to it by the shipper individually or by him and others a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than 100,000 barrels, all of which will be consigned for delivery to the same delivery point."

I am reading frrom I. C. C. No. 48, but the same, I think, is in all the tariffs in evidence filed by the Prairie Pipe Line Company as initial carrier.

Now, I would like to know what the reason is, if you know, for the adoption of that amount of 100,000 barrels, and as preliminary to that I ask you these questions:

958 First, what kind of crude oil does the Prairie Pipe Line Company transport?

A. Mid-Continent.

Q. Referring to Plaintiff's Exhibit 32, first map, and recalling the testimony given by Mr. Swisher, is it not a fact that so much of the oil transported by that line as moves on the northern branch of the Prairie through Carrollton and Griffiths, Indiana, as far as Preble, does not come in contact with any other oil than the Mid-Continent, that is, any other grade of oil?

A. It does not come in contact with any other grade of oil until it reaches Preble.

Q. What takes place in respect to its coming into contact with other grades of oil after leaving Preble?

A. Preble is located on the edge of the Indiana-Lima oil fields, and the oils produced there are liable to come in contact with it.

Q. Then does it go on through——

A. It may go through either of two routes. It may go up through Mantua, or down through Negley.

Q. What other chances are there of its coming in contact with other grades of oil?

A. At Preble it has a chance to come in contact with the oil from the Illinois field.

959 Q. What is the fact about the relative grades of Illinois and Mid-Continent, or their character?

A. Illinois and Mid-Continent for most purposes are near the same grade. There are some purposes that refiners tell me they cannot use one oil for when it is mixed with any considerable percentage of the other kind.

Q. What is their market value?

A. I cannot tell you.

Q. You don't know how they compare?

A. I do not. I can only look at that and find out when it concerns a line under my direction.

Q. For many purposes you say they are nearly the same?

A. Nearly the same.

Q. If the Mid-Continent oil is moved by the Prairie on the southern branch, as testified to by Mr. Swisher, I think, passing through Carrollton and then through Wood River, what other grade of oil may that come in contact with?

A. It comes in contact with the Illinois oil at the eastern part of Illinois, and with the Indiana-Lima oil near Bluffton, Indiana.

Recess until 2:30 P. M.

960 Afternoon Session.

FORREST M. TOWL resumed the stand.

Direct examination.

Continued by Mr. Crawford:

Q. Mr. Towl, does it result from what you said about the course of Mid-Continent oil through the lines of the Prairie Pipe Line Company, that that Mid-Continent oil moves for a long distance through those lines, then it comes in contact with any other grade of oil?

A. Yes, sir.

Q. In the course of that which passes through the northern branch by way of Griffiths, Indiana, can you tell me approximately how far it has come without coming in contact with any other oil? You may refer to Plaintiff's Exhibit 32, first map?

A. I don't know whether there is a scale on that or not.

Q. Yes, it is drawn to scale.

A. About 800 miles.

Q. How much?

A. 20 inches would make it approximately 800 miles, 40 times 20.

Q. How many hundred miles?

A. 800.

Q. If it went through the southern branch into some place in Illinois, as I understood you, about how far would it travel

961 without coming in contact with any other oil?

A. Approimately 600 miles.

Q. I show you Plaintiff's Exhibits 5 and 6, I. C. C. No. 209 and 212, which are joint tariffs filed by the Buckeye Pipe Line Company in conjunction with other carriers, in which the Eureka Pipe Line Company appears as a participating carrier, and I show you page

8 of I. C. C. No. 209 with the heading, "Minimum shipment in batch requirements," and page 7 of I. C. C. No. 212, with a similar heading, and ask you whether these two tariffs also provide for minimum amounts of shipments at certain points?

A. Yes, sir.

Q. And in each of the two tariffs the minimum amount originally provided for is 100,000 barrels, is it not?

Mr. Mathews: 100,000?

Q. When I say "originally provided for" I mean to say in the case of each tariff it is provided that "When such shipment singly or connected with other shipments of the same kind and quality of crude petroleum, consigned to the same destination shall aggregate a batch of at least one hundred thousand barrels at shipping point, then such single shipments amounting to one hundred thousand barrels or more shall be forwarded to destination." You find that in substantially both of these, do you not?

962 A. That is in paragraph A, yes, sir.

Q. And you find another paragraph on the same page, other amounts referring to different points, do you not?

A. Yes.

Q. Including the 75,000 barrels requirement for Morgantown?

A. Yes, sir.

Q. Do you find also a similar requirement from Bear Creek?

A. Yes, sir.

Q. Where is Bear Creek, Pennsylvania?

A. Bear Creek, Pennsylvania is on the lines of the National Transit Company and North Pipe Line Company between Pittsburgh and Oil City.

Q. Please look at Exhibit Fourth Map. Is the Bear Creek referred to the point on the Alleghany River where as laid down on this map the lines of the National Transit Company and the Northern Pipe Line Company come together? Is that correct?

A. Yes, sir.

Q. From Bear Creek there is a continuous through connection to the seaboard, is there not? That has been testified to here?

A. Yes, sir.

Q. By the lines of the Northern——

A. Two connections, one by the Northern and one by the National Transit Company through Philadelphia.

963 Q. And the Northern goes from the New York Transit Company?

A. Yes, sir, and the National Transit Company comes down to Mill Way, and goes on to Philadelphia or to New York.

Q. What I want to ask you is whether Bear Creek is a shipping point or junction and as such bears about the same relation to these two lines through connections to the seaboard, that Morgantown bears to what you called a through line, starting from Morgantown extending over the Southern and its connections to the seaboard?

A. Somewhat similar.

Mr. Mathews: Would you mind stating in your question, without my objecting, what sort of relation you mean? When you say "bears the same relation."

Q. I mean as a distributing point, and with reference to the same conditions which may result in contamination?

A. It is used in the tariff as a defining point for the routing over which the oil travels.

Q. What do you mean by "defining point."

A. Simply it shows that the oil going between certain points goes via Bear Creek and via Morgantown; that they go through that point.

Q. Do you know how this minimum amount of 100,000 barrels which is mentioned in the tariffs of the Prairie Pipe Line Company I. C. C. Nos. 33, 30, 66, 58, 17, 43 and 48 came to be adopted?

964 Mr. Mathews: Please do not answer unless you know the information sought as of your own knowledge.

Q. I am asking you, Mr. Towl, whether you know, and I mean, of course whether you know of your own knowledge?

A. I know it was arrived at at a conference.

Q. Where you present at that conference?

A. Yes, sir, at which I was present.

Q. You mean a conference of carriers?

A. A conference of carriers, yes.

Q. What other carriers were represented at that conference?

A. The carriers that are mentioned on the tariffs.

Q. All the concurring carriers?

A. Yes, sir.

Q. When was that, about?

A. Prior to February, 1916. I cannot say how long.

Q. In two weeks or two years?

A. I really cannot say just what time that was, without going back to find the date of the conference by correspondence.

Q. These tariffs which I have been asking you about, which are dated at different dates in 1915, 1916 and 1918, did they superseded other tariffs?

A. Yes, sir.

Q. Between the same carriers?

A. Yes, sir.

Q. Did those earlier tariffs contain the same restrictions?

965 Mr. Mathews: Do you mean the same figures in that section?

Q. I mean, did they contain a restriction to the same effect and limiting the amount of shipments in the minimum amount of shipment to 100,000 barrels?

A. They contained a restriction, possibly at the time of that conference the restrictions were changed in reference to some places. Originally, I believe my recollection is that the restriction was 300,000 barrels.

Q. What was the reason which influenced this conference to de-

cide upon this 100,000 barrel amount, the restrictions in the Prairie pipe line company tariff referred to?

Mr. Mathews: The question and the answer are objected as improper and calling for incompetent testimony.

A. Certain oils that were formerly moving through lines to through which the Prairie oils were moving were reduced in quantity and the chances of contamination were reduced.

Mr. Mathews: The motion is made to strike out the foregoing answer as the witness has not shown himself to be competent to give the reasons of any person present in the conference other than himself.

Q. You were present and heard the discussions at that conference, is that correct?

A. Yes, sir.

Q. You heard the reasons that were advanced in the dis-
966 cussion by one and another?

A. Yes, sir.

Q. You heard the conclusion arrived at on account of the ground you have just stated?

Mr. Mathews: The question is objected to as improper.

A. Yes, sir.

Mr. Mathews: A motion is made to strike out the foregoing answer for the same reason. I have no objection whatever to the witness stating the reasons which may have induced him as the representative for whatever pipe lines he represented at such conference, to take the action which he then took on behalf of such pipe lines. I now make the objection that it is immaterial and irrelevant and not proper to the issues in this case.

Mr. Crawford: That is the only objection you stand on now?

Mr. Mathews: Yes.

Q. The reason for obtaining a limitation and fixing it at 100,000 barrels was on account of the general matter of contamination, was it?

Mr. Mathews: Objected to as improper.

Mr. Crawford: And because this witness cannot speak for others?

Mr. Mathews: I think it is improper for a good many reasons in the form it is put. In the first place that simply calls
967 for a direct yes or no answer and virtually makes counsel the witness. In the second place if there was any real conference or discussion of these matters at the conference there must have been more than one reason which induced the action taken, otherwise there was no occasion for a conference that I can see.

Mr. Crawford: I will withdraw the question.

Mr. Mathews: You would not have a discussion if everybody was agreed.

Q. Did the question of the contamination of oil, between oil of different grades come up at that conference?

Mr. Mathews: I make the same objection.

A. Yes, sir.
Q. And was it discussed?
A. Yes, sir.
Q. Did it have any bearing upon fixing the amount of the shipment at 100,000 barrels?
A. It did.
Q. In a general way, what bearing?
A. The experience in reference to the oils handled out showed that it could be handled in smaller batches than 300,000 barrels, particularly as to certain points of destination, and the discussion was principally as to what amounts that could be made to properly guard against undue contamination.

Q. Was it in consequence of that discussion and the con-
968 clusions arrived at in it that the amount was fixed at 100,-000 barrels?

Mr. Mathews: Counsel for the defendants object to this question and any answer thereto, for the reason that while the witness in his last answers in response to several questions has stated that the question of contamination was discussed and considered and constituted to some extent at least a reason for the agreement reached at the conference, yet in former testimony he has explicitly stated that the reduction of the amount required for a single shipment out was reduced possibly from 300,000 to 100,000 barrels, because of the condition of other subsequent pipe lines and the lesser amount of oil then being run through such connecting lines. The question therefore is misleading, and in part contradictory of the testimony already given by this witness.

Mr. Crawford: I will withdraw that question.

Q. Why was there any limitation at all retained?
A. Because the oil would come in contact with other oils in various localities and if it was handled without restriction as to amount there would be undue contamination.
Q. Why was the restriction as high as 100,000 barrels? I do not ask you why it was reduced, although you told me that. Why wasn't it reduced a great deal more? What was the reason for keeping it at 100,000 barrels, Mr. Towl?

969 Q. The movements to which the 100,000 barrels applied were considered to be such movements as would render oil liable to undue contamination if moved in less amount than 100,000 barrels.

Q. What reason is there why the Eureka Pipe Line Company should care whether the contamination on its lines or any oil which is sent beyond its lines, is more or less?
A. The Eureka Pipe Line Company is interested as a joint participating carrier in the movement, and the better service the entire

movement has is to the advantage of the Eureka Pipe Line Company as giving better service.

Q. When you say "better service", what do you mean?

A. More satisfactory service.

Q. More satisfactory in what respect?

A. Delivery of oil comparatively free of contamination.

Q. And more satisfactory to whom?

A. To the patrons of the line.

Q. Is there any particular grade of oil to which these considerations apply?

A. They apply more to the more valuable grades of oil.

Q. What are they?

A. The Pennsylvania oils.

Q. Has it been your experience that consignees of these oils, especially Pennsylvania grade, complained if there was a large percentage of contamination?

A. They did.

970 Q. You stated that you wanted to give these consignees, I think was the word, better service?

A. The patrons of the line.

Q. Better service by which you mean a less degree of contamination in the oil?

A. Yes.

Mr. Mathews: I object to the question because the witness has answered the reason.

Q. I understood you to say that the Eureka Pipe Line Company wished to make its service more satisfactory to the patrons of the line?

A. Yes, sir.

Q. And will you please say what you mean by "satisfactory"?

A. Our business is transporting oil. We transport several different kinds of oil. The patrons of the line claim that it is to a considerable advantage to them to have the oil delivered to them as free of contamination as possible.

Q. And when you said "satisfactory" service, then did you mean satisfactory in that respect?

A. Yes, sir.

Mr. Mathews: Only?

The Witness: There are other things that enter into satisfactory service. That is the principal one that has to do with the limiting of the batches to 100,000 barrels.

971 Q. Has there been any incident in the management of the Eureka Pipe Line Company or any of its connecting carriers which bears out what you say? I mean, has there been any shift of business one way or the other in that connection?

A. Yes, there has been quite a shift of business. The Indiana and Lima oil production has been greatly decreased.

Q. Decreased where?

A. In the fields, the production of oil in the fields and its move-

ment through the pipe lines has been greatly decreased; for that reason it was not necessary to retain the former high amount.

Q. That is not quite what I mean. I mean to say, you have spoken of the desire to render satisfactory service, and that at least one important thing which you have in mind was in relation to the amount of contamination and that that bears particularly upon Pennsylvania grade oil?

A. Yes, sir.

Q. Has there been any difference in the amount of Pennsylvania grade oil that is now transported through the Eureka and the Southern and generally speaking the Southern group of pipe lines as compared with what took place formerly?

A. No, practically the same.

Q. Reference has been made in the examination of Mr. Kenney to the use of water interposed between two columns of oil in the pipes and the query was made as to whether that could not be used
972 as a method of preventing contamination. I think that roughly represents the suggestion of Mr. Avis.

Mr. Avis: I asked him to what extent, as compared with different grades of oil.

Q. What have you to say about that?

A. Water causes contamination of oil, which is more complained of than the contamination caused by mixture of other oils.

Q. Has the proposition of trying to use water as a cushion or an intervening mass between columns of oil been the subject of consideration by pipe line engineers?

A. No, the question has not been suggested by pipe line engineers, but by people who have never had any experience in trying to separate oil and water in various cases. But a pipe line engineer very early in his experience finds out that it is very difficult to separate any water from the oil, and it causes contamination that is almost impossible to get rid of.

Q. And would you say that the people who receive and refine that oil do not want that mixture?

A. They do not.

Q. Do you know what the scientific reason for the damage resulting from the mixture is, how does it act?

A. When it is put into the stills at the refinery, it causes what they call a puking of the stills, a very violent eruption which is
973 exceedingly dangerous to the men who are operating, and results not only in the danger, but sometimes in a loss of quite a lot of oil, and fires.

Q. Mr. Kenney, I think, testified to the use of a small amount of water under certain conditions. What about that?

A. When it becomes necessary to repair a pipe by taking out a piece of it, or putting in a valve or some other case, if that place is located between points where the elevation is higher than the place where the line is out into, if the line was cut into the oil would run out and would be lost. If they are going to make a repair in a line they put in, by computation, enough water so as to fill the section of the line where the cutting is to be made, and then when the line

is cut instead of losing the oil the water runs out, the large bulk of the water runs out in this way. The balance stays in the pipe and the place where it runs out is filled up afterwards with oil, and the water is carried through and an effort is made to separate that water out and get rid of it as soon as possible, but it is very difficult to get rid of all of it. They get rid of a large part of it, but certain oils pick up and emulsify very rapidly with water when it is in motion; the carrying up of little globules of water by the velocity of the water running up hill, and then the water in running down again will cause emulsifying of the oil. There are other impurities
974 which are a great detriment to the operation and make it very difficult to remove and separate the oil from the water.

Q. When you said that most of the water runs out, I suppose you mean it runs out on the ground, doesn't it?

A. Yes, it runs out on the ground.

Q. Mr. Towl, reference has been made here once or twice to the matter of pumping, where they pump it some distance away from the State line, for example, I think it was testified that the impulse to move oil from Ewings to Morgantown was given by the pumping station at Ewings, was that correct?

A. The impulse to move oil, Mid-Continent oil from Ewings to Morgantown is given by the pump at Ewings.

Q. And they belong to the South West Pennsylvania Pipe Lines?

A. Yes, they do.

Q. Is there any adjustment given of the cost of pumping between those two points as between the South West Pennsylvania Pipe Lines and the Eureka Pipe Line Company?

A. There is in a division of the rate.

Q. That is to say, the South West Pennsylvania Pipe Lines is allowed something extra for the service?

A. They are allowed more than they would if the amount was divided on a straight mileage basis.

Q. Similarly, where oil is pumped from Morgantown to
975 Watson in Pennsylvania, is there an allowance made there to the Eureka Pipe Line Company?

A. Yes, sir.

Q. Made on their division of the rate, of the through rate in the same way?

A. Yes, sir.

Q. That is the Eureka gets somewhat more than they would if it was simply the division of the through rate on the mileage transported?

A. Yes, sir.

Mr. Mathews: May I inquire without disturbing you whether this was the same additional compensation that has already been testified to as the fifty per cent mileage for connecting carriers, miles to be pumped through?

The Witness: Yes, sir, fifty per cent of the mileage, and the other carrier's mileage would commence at the point where it is handled.

Mr. Mathews: That is the way I understand it.

Q. That is to say, the South West Pennsylvania Pipe Lines get an amount equal to fifty per cent of what the Eureka would otherwise have received from the Pennsylvania State line down to Morgantown?

A. Received on account of its mileage from the Pennsylvania State line down to Morgantown.

Q. And in the same manner going up from Morgantown?

976 A. Yes, sir.

Q. Reference was made to the pipes, not necessarily the present pipes but the pipes originally laid from the Pennsylvania State line south to Morgantown, and from Morgantown up to the Pennsylvania State line again, and the question was asked as to how the Eureka Pipe Line Company came to be the owner of those pipes or of that line. Do you know?

A. I know that there was a transfer of the property made from the original owners to the Eureka Pipe Line Company.

Q. After its incorporation?

A. After its incorporation, yes.

Q. I don't remember whether the price of Mid-Continent or the present price of Mid-Continent oil was put on the record or not. I did not notice it. I made a memorandum of it, and I will ask you now as I am running through. You can state it and it will do no harm to repeat it. What is the market price of Mid-Continent oil to-day?

A. I could not tell you. I don't remember.

Q. Does it compare with the Pennsylvania grade at $4.50 upward, or does it compare with these other grades that have been referred to?

Q. It is considerably less than the Pennsylvania grade. I don't keep track of the market price of those oils.

Q. I want to know whether these tariffs which have been

977 put in evidence are all the through tariffs that are in force now and with which your company is a concurring carrier?

A. I cannot tell without having a list of the movements and the tariffs to see. I believe they are.

Q. Will you before tomorrow morning look them over and see? I don't want to stop to have you make that examination now. Will you try to check them up before to-morrow?

A. Yes, sir.

Mr. Mathews: I was under the impression, Mr. Swisher had already said so.

Q. My attention is called to the fact that the tariffs which we have offered here are only tariffs under which oil was run during the twelve months in question, and I will confine my question to asking you whether these are all of such tariffs?

A. Yes, sir.

Q. Mr. Towl, there has been a good deal of testimony in regard to the matter of the deduction of the one per cent of oil received by

your company for evaporation and waste. You have had a great deal of experience in the course of your career with oil in the field, haven't you?

A. Yes, sir.

Q. And you have had occasion to examine it all the way from the well to the refinery, haven't you?

A. Yes, sir.

978 Q. Whereabouts in the course of its movement do the evaporation and waste chiefly take place at any particular place more than others?

A. The first loss from evaporation occurs in the producer's tank; at the time the company starts to take the oil from the tank, the tank is gauged, and they become responsible for that amount of oil less what it contains in the tank at the conclusion of the run. As soon as the run starts to move, the oil starts to move out of the tank, the oil will begin to give up some of the gas which is held mechanically in suspension in the oil, the same as gas is held in a glass of vichy. When the glass stands for awhile it seems as if all the gas had gone off, but if you take that and agitate it a little the gas will start and come up to the top. That is the first loss. The two per cent is taken care of in the tables by which the tank is gu*a*ged. It never enters in the books of the company at all. The The tables are made from a formula which takes care of that two per cent. There is no record of the two per cent on our books. We never deduct the two per cent at any point other than it is deducted by the tank tables themselves.

Q. What you mean is that the table indicates that you give the producer credit for 98 per cent of the oil for which you, as you stated, are responsible? That is the difference between the amount originally in the tank and the amount in the tank when you get through?

979 A. Yes, sir.

Q. But instead of giving a credit of the whole of that you give him credit for 98 per cent of it?

A. Yes.

Q. That is to say you do not make the deduction of that two per cent, but you have your tables so arranged that the deduction is made?

A. Yes, sir.

Q. So that what gets on to your books in the first instance is only 98 per cent of what the producer is given credit for?

A. Ninety-eight per cent of what the producer is given credit for, that is, of the actual oil in his tanks. His credit balance is two per cent less than the gauges show, if the gauges were made from actual and not from an enlarged quantity.

Q. Are those facts well known by producers?

A. Perfectly.

Q. There is nothing secret or underhanded about that?

A. Nothing at all.

Q. That is the recognized method of procedure?

A. That is the recognized method.

Q. The two per cent is never entered on the books at any time?
A. Never entered on our books at any time, no.
Q. What other elements are there which tend to diminish the quantity of good oil which you get other than the one of
980 evaporation?
A. The evaporation,—in most of the tanks the oil is open to the elements, and the oil is mixed with dirt and leaves and water, as well as the water and sand that are pumped out of the wells, which all goes into the tank. We try to settle it out as well as we can. We take a thief and examine the tanks before we run it.
Q. What do you mean by a thief?
A. A thief is a mechanical contrivance for taking a certain amount of oil from different strata of the tank. We run a thief in down to the bottom, and it is an arrangement open at both ends, and when it is down at the bottom, when it reaches the bottom, there is an arrangement made that closes it up, and you can bring up that sample which represents a foot or two feet of the bottom of the tank, and then you can examine it when it gets up to the surface. The thief has one side which is closed, and if you want to make a very careful examination, a more careful examination than that, why, you can do it by other means.
Q. That is done to enable you to observe how nearly you have settled these foreign materials out of the oil?
A. It is done in an effort to keep those foreign materials from getting into the lines.
Q. But they all are included in the one hundred per cent of the oil which you originally received?
A. All that goes out of the tank, yes, are included, and
981 they are included in the full gauge of the tank, and all that is left is included in the gauge of the tank at the close of the oil.
Q. Whatever goes out of the tank you lose?
A. Yes, we lose.
Q. And that tends to diminish the quantity of good oil, does it?
A. Yes.
Q. What is included under the head of "waste" in that connection I mean, of evaporation and of dirt of all kinds, and of these things you have spoken about?
A. There are sand, leaves, anything that may be in the tank at that time, and incidentally leakage that there is no way of determining. The producers' tank may have a small leak, and a small leak may leak from the time we start to make the run until we close, it and that will be a loss to us.
Q. Does this evaporation you speak of as beginning in the producer's tank continue as the oil flows through the pipes and continues on its course?
A. Yes, sir. As the oil is agitated, particularly moving by gravity lines, certain parts of this gas that is imprisoned in the oil, in certain oils, will begin to separate itself from the body of the oil. This gas in the oil is really an oil in a gaseous form. Under certain conditions it becomes a gas and under other conditions it is an oil.

982 Q. By the time it gets into the trunk lines, what about the evaporation then?

A. The losses decrease quite rapidly after they start from the producer's tank. Every time the oil stops or slows up for a few minutes it gives a chance for any impurities to begin to settle out, and the larger impurities settle out very quickly. As it goes on smaller and smaller amounts settle out and become separated.

Q. So that after it has been going for a certain distance through the trunk lines the amount of evaporation becomes very small, does it?

A. Yes, the amount of evaporation and the other losses become very small.

Q. In what condition with respect to evaporation or the liability to evaporation is the Pennsylvania grade oil which is received by your company at the West Virginia State line from the Buckeye Pipe Line Company?

A. It is at that time practically the same with the oil that is gathered from the producer's tank in our lines as it is before it reached our principal lines. In fact, it goes into the same lines. The oil is practically in the same condition when it reaches the same point.

Q. Is the amount of evaporation after that oil comes into your lines large or small, relatively, I mean?

A. We have no way of obtaining very accurate data on
983 that question. It is comparatively small.

Q. One per cent of that Pennsylvania grade oil which comes into your lines from Ohio is deducted under the tariff for losses due to shrinkage and evaporation incident to the transportation of crude petroleum by the pipe lines. I am referring to clause 9 on page 7 of I. C. C. tariff No. 209 of the Buckeye Pipe Line Company tariff. That is the general fact, isn't it?

A. Yes, sir.

Q. And you have heard the testimony that has been given in regard to that by the other witnesses?

A. Yes, sir.

Q. Your company retains only a portion of that one per cent so deducted?

A. Yes, sir.

Q. In your opinion as an engineer and an expert of many years' experience in the transportation of oil, does that proportion of one per cent which your company retains, I mean the one per cent so deducted on oils received from the Buckeye Pipe Line Company, suffice to offset the loss due to shrinkage and evaporation while the oil is in your lines?

Mr. Mathews: The foregoing question is objected to because the witness, although a qualified expert, has just testified within the last five minutes that after it was received into the Eureka Pipe Line Company's lines, the oil passed through from the Buckeye Pipe Line Company, and that he or his company, or himself as an ex-
984 pert had "no way of obtaining any very accurate data on that question."

A. I cannot say definitely, but I believe that it comes very close to our losses.

Mr. Mathews: The defendants move to strike out the foregoing answer, because even an expert is not qualified to deliver opinion evidence when he admitted that he has no way of obtaining accurate data, upon its face.

Q. I ask you your opinion. You mean to say that that is your opinion, do you?
A. That is my opinion.

Mr. Mathews: The objection is to the opinion, the witness having stated that he has no data sufficient to base it upon.
Mr. Crawford: I do not think he said that.
Mr. Mathews: He said precisely what I quoted, "We have no way of obtaining any very accurate data on that question."

Q. Can you produce the tariffs, if any, which were filed prior to I. C. C. No. 151, in the same series?
A. I can, most of them.
Q. I will show you one.

Mr. Avis: As to the contents of those tariffs, we have no objection to his stating without your putting them in. They have been in force and effect for years. In other words, I do not mean to hold you to technically putting the tariffs in. The witness could state, as I understand, in a general way, that they had been in force
985 and effect for years.

Q. Mr. Towl, referring to I. C. C. No. 151, Plaintiff's Exhibit 35, what is the meaning of the words "local tariff"?
A. "Local tariff" means that this is not a joint tariff. It is simply a tariff of the Eureka Pipe Line Company.
Q. Some reference was made by Mr. Swisher who was on the stand to your company buying and selling oil. State when your company buys any oil and particularly when it bought any oil if it did so during the twelve months under consideration. I do not mean the dates, but I mean the occasions?
A. When the book accounts showing credit balances compared with the book accounts showing the amount of oil that we have in our lines, and stations shows that the credit balances are getting nearly as high as the amount shown in our oil books, as to the volume of oil in the line, we buy oils so that our credit balances will all be taken care of.
Q. When do you buy, what do you buy in such cases?
A. We buy a credit balance.
Q. You buy a credit balance?
A. Yes.
Q. The result of that buying is what, upon the total amount of the credit balances that are on your books?
A. It reduces our liabilities.
Q. Do you reduce the credit balances?
A. We reduce the credit balances of the party we buy from.

986 Q. Then you reduce the total credit balances?
A. Yes, we reduce the total credit balances.

Mr. Mathews: Do you mean that? Don't you transfer it to the Eureka Pipe Line Company's own credit balance, leaving the credit balance the same? Which is correct?

Q. Do you carry credit balances of your own? Do you carry any account in which you are credited with a balance?
A. No, sir.
Q. Does your operation of buying under those circumstances increase the volume of the physical oil in your system at the moment?
A. No, sir.
Q. It does, however, reduce your obligations to that extent to producers, doesn't it, or to the owners of credit balances?
A. To the owners of credit balances, yes, sir.
Q. Why do you do that? Why do you buy credit balances under those circumstances?
A. To keep our credit good.
Q. Is it to meet a legal obligation?
A. The obligation—we have to have oil enough in our line to meet our credit balances.
Q. When do you ever sell oil, particularly when did you sell oil, or on what occasions did you sell it, if any, during those twelve months, if you did?
987 A. We did not sell any.
Q. You did not sell any?
A. No.
Q. On what occasions did you ever sell any oil?
A. If our oil on our books showing the volume of oil in our custody is much larger than the credit balance, we have sold to some one a credit balance.
Q. You did not do it during the twelve months in question?
A. We did not.
Q. How long is it since you have made any such sale, if you know?
A. I cannot recall definitely, I should say three years. It may have been longer.
Q. In regard to this payment made to your company by the Cumberland Pipe Line Comapny of one-hundredths of one cent per barrel per day, I think it was, that payment is not made under any tariff, is it?
A. No, sir.
Q. Please explain how it came about?
A. The Eureka Pipe Line Company's tariff for gathering oil contains a clause relative to so-called storage, which is practically the same as a corresponding tariff of the Cumberland Pipe Line Company. The Cumberland Pipe Line Company is not required to keep the oil to meet their credit balances within the State.
988 They had very small lines and no convenience for handling this oil, and the oil was being produced in comparatively large quantities so that if they did not move the oil along in its

accus-omed course, it would require the shutting down of taking oil from the producers. It was considered better to move the oil along, particularly as it was demanded that we should do everything possible to get oil to the Atlantic seaboard on account of the war. This oil was moved ahead without any tender of shipment.

Q. Moved ahead when?

A. Moved ahead first through the lines of the Cumberland Pipe Line Company, then into the lines of the Eureka Pipe Line Company.

Q. Was there any special reason for the delays in the tanks?

A. Yes, sir.

Q. What was it?

A. A number of the accounts in the Cumberland Pipe Line Company were tied up in litigation, and a number of the men holding credit balances in the Cumberland Pipe Line Company were not placing their oil in the regular course of movement, or disposing of it to any one who would place it that way.

Q. What do you mean by that, Mr. Towl, the "regular course of movement"?

A. The only outlet for the oil that is gathered by the Cum-
989 berland Pipe Line Company, except a possible loading of oil on cars, is through the lines of the Eureka Pipe Line Company, and then on to other connecting carriers. There never has been any other movement through those lines.

Q. What do you mean by "placing it" in movement?

A. It starts from a well and moves right along towards the Atlantic seaboard.

Q. You said the producers were not placing it in course of movement, or something of that sort?

Q. They were not tendering their oil for shipment to any definite point. They were simply retaining their credit balances.

Q. That is what you mean?

A. Yes.

Q. You did not mean to say they were stopping the physical oil anywhere?

A. No, sir, they were retaining their credit balances.

Q. Were they holding on to their credit balances more than usual?

A. Yes, sir.

Q. Do you know what the reason was, what was the reason that they gave?

A. I suspect. I know what reason some of them gave.

Q. What reason did they give for it?

A. They thought the price of oil was going up, and by
990 holding their credit balances a little while they could get more than enough for it, more than enough to pay for the so-called storage charge that was imposed.

Q. You made an arrangement with the Cumberland Pipe Line Company, did you, about this amount that your company was to receive?

A. Yes, sir.

Q. And the amount was fixed at one one-hundredths of one cent per day per barrel?

A. One one-hundredths of one cent per day per barrel; yes.

Q. Who paid you that when it was collected?

A. The Cumberland Pipe Line Company.

Q. It has been testified, I believe, that the oil that we are now talking about, that is still on your books as credit balances in favor of the Cumberland Pipe Line Company?

A. Yes.

Q. Until it was tendered?

A. Yes.

Q. For how long after it was entered on your books as a credit balance was it before you made this charge?

A. One day.

Q. One day?

A. Yes, sir.

Q. That is to say, the charge of one one-hundredths of one cent per day per barrel became immediately effective, or went im-
991 mediately into force, did it?

A. Yes, sir.

Q. And did not wait sixty days or ninety days?

A. No.

Q. As in the case of a tariff charge?

A. No, sir.

Q. And that also was by private agreement between your company and the Cumberland Pipe Line Company, was it?

A. Yes, sir.

Q. I think you said that the money for that service was paid by the Cumberland Pipe Line Company, did you not?

A. Yes, sir.

Q. Paid to you?

A. Yes, sir.

Q. When Mr. Swisher was on the stand he was asked, "Does not the Cumberland Pipe Line Company charge its producers who do not consign the oil a storage charge to offset the so-called storage charge paid by the Cumberland Pipe Line Company to the Eureka Pipe Line Company that you have been referring to?" And he answered: "Yes, sir, at a slightly different rate. Q. Higher or lower? A. Higher."

What corresponding charge did the Cumberland Pipe Line Company make which Mr. Swisher referred to here?

A. The Cumberland Pipe Line Company makes a so-called stor-
age charge on the credit balances in their lines on a little dif-
992 ferent basis from the Eureka Pipe Line Company, the Cumberland time for oil free from so-called storage charges is from thirty to sixty days, on the Eureka it is practically from sixty to ninety days. The oil that goes into the lines of the Eureka Pipe Line Company and is a credit balance of the Cumberland Pipe Line Company may or may not be subject to credit balances. The credit balances need not cover that particular oil. They probably would

not. Cumberland makes their credit balance charge on the credit balances standing in their lines. That charge is one-fortieth of one cent a barrel per day.

Q. Their charge does not begin until from thirty to sixty days after the credit has been established?

A. Yes.

Q. Whereas in this particular case the charge by the Eureka Pipe Line Company begins immeditely, does it?

A. Yes, sir.

Q. So that it might not be true that the charge of the Cumberland was higher than that of the Eureka Pipe Line Company?

A. Yes, sir.

Q. It might be true that the Cumberland Pipe Line Company made no charge while the Eureka Company was getting its full one one-hundredths of one cent?

A. Yes.

993 Q. Might not that be true?

A. It might be.

Q. Provided the credit balance did not remain more than thirty days untendered, that would be so, wouldn't it?

A. Yes, sir.

Q. It would be so then up to that time that the Cumberland got nothing?

A. Yes, sir.

Q. So that this answer of Mr. Swisher's is only correct as to a certain part of the time or under certain circumstances?

A. It is only a partial answer.

Q. Has your company, the Eureka Pipe Line Company, an office in the State of West Virginia?

A. Yes, sir.

Q. Where?

A. At Parkersburg.

Q. Some questions were asked as to other companies having offices at some places. The South West Pennsylvania Pipe Lines was one mentioned, I think. Have they an office at the same place?

A. They have no office there.

Q. Has the Buckeye Pipe Line Company any offices there?

A. No, sir.

Q. Has the Southern?

A. No, sir.

994 Q. Has the Cumberland?

A. No, sir.

Q. Has any one of those companies, to your knowledge, an office within the State of West Virginia, except your own company?

A. No, sir.

Q. On whom does the loss for the one per cent deduction that is made under these tariffs fall? I mean, does it fall on the shipper, does it fall on the carrier, or does it fall on the consignee?

A. Either the consignee or the consignor. It does not fall on the pipe lines.

Q. Mr. Towl, have you had prepared statements showing the

expenses of operation and the other expenses of the Eureka Pipe Line Company for the year ending June 30, 1919?

A. Yes, sir.

Q. I hand you three sheets and ask you whether these are the sheets showing those expenses (handing papers to witness)?

A. In one sheet is shown the gathering lines' expenses for the year ending June 30, 1919. Another sheet shows the trunk line expenses for the year ending June 30th, 1919; and the third sheet shows the total of the two sheets first named as one of the items.

Q. I do not want you to go any further into detail.

995 Mr. Crawford: I offer these in evidence and ask that they be marked Plaintiff's Exhibit 45, Sheets 1, 2 and 3.

Mr. Mathews: To the introduction in evidence of these exhibits at this time, and without analysis or explanation of the items thereon set forth, the defendants object and except and desire to reserve the right should they deem expedient after opportunity to examine such exhibits, to formally move the Court to strike the same from the record.

Mr. Crawford: I will withdraw my offer, then. If you are going to try this case as you try a case in court we might as well know it.

Mr. Mathews: I shall certainly endeavor to try this case in such a way as to save all proper rights of the clients we represent. I am trying to do it with just as little inconvenience to you as we can do it, keeping in sight my solemn duty.

Mr. Crawford: I will withdraw the offer, which I think is technically premature. I was doing it to save time.

Q. I hand you these three sheets again, and I ask that they be marked Plaintiff's Exhibit 45 for Identification, Sheets 1, 2 and 3.

Papers marked Plaintiff's Exhibit 45 for Identification, Sheets 1, 2 and 3.

996 Mr. Crawford: Sheet 1 shows the gathering lines, sheet 2 the trunk lines, and sheet 3 the general total.

Q. Mr. Towl, please take Plaintiff's Exhibit 45 for Identification, sheets 1, 2 and 3. Turn first to sheet 1. How are your accounts of gathering lines' expenses kept?

A. They are kept in accordance with the rules of the Interstate Commerce Commission for keeping of pipe line accounts.

Q. Is the same true of trunk lines' expenses also?

A. Yes, sir, all of our accounts.

Q. Were the various amounts of expenses which are entered in the last column incurred by your company under the various heads which are shown in the left hand column on each of sheets 1 and 2?

A. Yes, sir.

Q. Turning to sheet No. 3, the first item there is "Tariff Revenues," $2,669,692.43. Is that the same amount which appears on sheet 2 of Plaintiff's Exhibit 4 as "Total gross revenue for transportation"?

A. Yes, sir.

Q. There has been some evidence in this case about moneys paid

your company as so-called storage charges against credit balances, and also certain amounts that you received from the Cumberland Pipe Line Company, and the two amounts together I think,
997 according to the testimony, amounted to $10,000 or $11,000. I intend to speak only in general terms. Whatever that amount is, does that appear on this sheet 3, and if so, where?

A. The so-called storage charge charged by the Eureka Pipe Line Company appears in the "Tariff Revenues." The connecting carrier charge paid by the Cumberland Pipe Line Company does not appear on that sheet.

Q. Are you not mistaken about the first statement? The first item on this page, sheet 3, is the same as the item of "Total gross revenue" on the second sheet of Plaintiff's Exhibit 4, is it not? The figures are the same, are they not?

A. Yes, sir.

Q. It has been testified in this case—and I think my friends will allow me to say so—that that item did not include the amounts received from the so-called storage charges from the Cumberland Pipe Line Company. Do you know where they do appear? Are you prepared to answer that question?

A. You are correct. That only refers to the tariff revenues on transportation. It does not refer to the so-called storage item.

Q. Where does that item appear?

A. In the item "Gathering and trunk line adjustments."

Q. And where does the amount you received appear?

A. In "Inter-carriers adjustments."

998 Q. Does that $5,433.61 consist only of the amount that you received from the Cumberland or are there other items included in that total?

A. There is an item of something like $10 from the South West Pennsylvania Pipe Lines on similar adjustment.

Q. It is the sum of those two, is it?

A. Yes, sir.

Q. I mean, is there included under that head the gathering and trunk line adjustments?

A. In "Gathering and trunk line adjustments," there are some adjustments, where the gathering lines charge the trunk lines, and the trunk lines charge the gathering lines for the use of their facilities. Our system is divided up as well as we possibly can do so into two systems, gathering lines and trunk lines. Some of the facilities of the gathering lines are used by the trunk lines, and some of the facilities of the trunk lines are used by the gathering lines. There is an adjustment in there between the two.

Q. Do you make any distinction between gathering lines and trunk lines? Are those adjustments in accordance with any regulation?

A. The auditors of the Interstate Commerce Commission ask us to divide that as accurately as we can, and where we cannot divide it accurately to do the best we can in making a fair apportion-
999 ment of the division.

Q. The other items, for instance rents from dwellings,

rents from telegraph property, rents from leased lands, is that income derived from property not used in connection with the operation of the company?

A. The rent from dwellings is the only account we have, and that shows red on the statement. It means that there was more spent out for the taking care of the buildings——

Q. I didn't ask you that. I asked you whether the property had anything to do with the operation of the pipe lines?

A. No, sir.

Q. That is simply property that the company owned outside?

A. Yes.

Q. In the nature of investments?

A. Yes.

Q. And bonds, or the interest on bonds referred to, those bonds are outside investments are they not?

A. Yes, sir.

Q. They are a source of revenue, and they have nothing to do with the operation of a pipe line?

A. No, sir.

Q. And they have nothing to do with your ordinary business?

A. No, sir.

Q. I see an item here, "Amount paid in satisfaction and
1000 settlement of the claims of the Freudenberger Oil Company," of $45,000. Please explain that.

A. That is a settlement paid of a claim against the Eureka Pipe Line Company, and I think I can explain it in detail very well.

Q. That is enough. These various items seem to explain themselves. The loss on Liberty Bonds was a loss on bonds sold I suppose which belonged to the company?

A. Yes.

Q. And the other amounts were amounts that were paid out by the company?

A. Yes, sir.

Q. And under the head of "Profits," what does that "profit on the sale of pipe line to Ohio Cities Gas Company" mean?

A. The Eureka Pipe Line Company built some pipe lines in the Cabin Creek district to gather some oil, and when we got ready to gather it it had made other arrangements and the pipe was there on the ground, and the Ohio Cities Company said that they could use the pipe, and they bought it from us at an advanced price. The price of the pipe material was up and it was worth more to them at that time.

Q. What about the item of the Rachel Gas Coal Company Mine?

A. That is pipe put in in a change of our lines, and the Rachel Gas Coal Company requested us to make the changes and
1001 agreed to pay for the pipe, and appears here as paid for by them.

Q. Is that the amount that you received or the amount of profit there was in the transaction?

A. The amount of the profit there was in the transaction.

Q. On sheet 2, item No. 277, "Oil shortage" $4,096.35, please explain that?

A. On sheet 2? I cannot give the details of that.

Q. Will you inquire before tomorrow morning, and also whether that was all of the oil shortage that there was or whether there was some other item of oil shortage included in some other item here?

A. Yes.

Q. And be prepared tomorrow morning to answer in regard to that?

A. Yes.

Q. My attention is called by Mr. Dorworth to the item of the Rachel Gas Coal Company Mine, $879.37, and I ask you again whether that was a profit on the transaction or whether that was simply a payment of which there is an offset somewhere in the account?

A. I believe it is a profit on the transaction.

Q. Sheets 1 and 2 of Plaintiff's Exhibit 45 for Identification, reading them together, show a total operating expenses for the
1002 year ending June 30th, 1919, as $1,711,765.05, is that not correct?

A. Yes.

Q. And that appears as the second item at the top of sheet 3, does it not?

A. Yes, sir.

Q. And after deducting that amount from what is called on the third sheet "Tariff Revenues," which is the same as I understand as "Total gross revenue from transportation" and also deducting the amount of taxes that your company paid during the same period, there was left $610,192.59. That is correct, isn't it?

A. Yes, sir.

Q. Which is set down here as the operating income. What was the total net income of the company for that period?

A. The total net income for that period was $640,737.88.

Mr. Crawford: I now offer in evidence Plaintiff's Exhibit 45 for Identification, sheets 1, 2 and 3, and ask that it be marked as Plaintiff's Exhibit 45, sheets 1, 2 and 3.

Mr. Avis: We make a formal objection to the admission of this exhibit in evidence and reserve the right to make our objection to its admission in evidence later on in this proceeding, at which time we will assign our grounds of objection, if any.

Mr. Crawford: That practice is entirely unknown to me.
1003 I suppose it may be the practice in West Virginia. I do not want to break into your system of practice. But that would not be permitted here. I think I have a right to ask for some limitation upon your objection. You do not object to the fact that the original books are not produced?

Mr. Avis: No, sir.

Mr. Crawford: And you do not object to the fact that these accounts were taken off the books by someone other than the witness but under his direction?

Mr. Mathews: No, sir, we do not make that objection. We have no reasons to suppose that they do not correctly show what the books show?

Mr. Crawford: All right.

Paper received in evidence and marked Plaintiff's Exhibit 45, Sheets 1, 2 and 3.

1004 Q. Mr. Towl, Mr. Kenney referred to what he called "Discharge lines" when he was being interrogated as to the mileage of the system of your company. What are discharge lines?

A. A discharge line is a line which receives oil from our pressure pump.

Q. How is that distinguished from gathering lines?

A. A Gathering lines may be discharge lines. Part of our gathering lines are gravity lines and part would be lines where the oil is pumped.

Q. So either kind of lines may be connected with the producer's tanks, may they not?

A. We would not discharge into the producer's tanks.

Q. Out of the producer's tanks?

A. We would have a suction line from a station going into the producer's tanks, and then pump that into our system. That would be a discharge line.

Q. Many of the lines from producer's tanks are gravity lines, are they not?

A. Yes, sir.

Q. You distinguish those from discharge lines, do you?

A. Gravity lines and discharge lines, as we call them, would be separate lines.

Q. How many wells of producers has your system in West Virginia got connected with it?

A. Something in the neighborhood of 16,000.

1005 Q. Is there connected with each well a tank or one or more tanks?

A. Not necessarily with each well. Several wells may put their oil into one tank.

Q. Is it true that each producer's tank is connected with one or more wells?

A. Each tank is connected with one or more wells.

Q. If you take the oil from some 16,000 wells, how many producers' tanks does that mean?

A. I cannot tell you.

Q. Several thousand?

A. Yes.

Q. And what proportion of the lines are gravity lines as distinguished from discharge lines?

A. I could not tell you offhand. It would be a matter of computing, which one would have to go into the field to find out.

Mr. Crawford: That is all. You may cross-examine; but before you start in I would like to note, that I want to reserve the right to put in a few additional tariffs which would not be strictly re-direct. They are not current tariffs but former tariffs.

Mr. Avis: We won't make any objection on our side of the case between direct and re-direct.

Mr. Crawford: Then he is your witness.

1006 Cross-examination.

By Mr. Mathews:

Q. Mr. Towl, prior to your election to the presidency of the Eureka Company in November, 1911, you had been an executive officer of that company for a number of years, had you not?

A. I had not.

Q. I understood you so to state. What was your first connection with the company?

A. I was connected with the company but not as an executive officer.

Q. In what capacity, sir?

A. Consulting engineer.

Q. As such consulting engineer you had charge and supervision of the installation, extension and engineering operation of the company's lines in West Virginia, had you not?

A. As consulting engineer I had charge of the engineering work. Previous to being consulting engineer I was general superintendent.

Q. And in both capacities, your connection with the company as an executive, or if you distinguish then as consulting engineer and superintendent, were personal and active and not in any sense normal?

A. They were, yes, sir.

Q. Since your election as president in 1911, that same condition has continued, has it not?

A. I have been actively connected since my connection.

Q. You have given your active, continuous, personal serv-
1007 ice to the discharge of your duties?

A. Yes, my personal attention.

Q. And the duties of president of the Eureka Pipe Line Company have been and are rather extensive and detailed, are they not?

A. Yes, sir, there is a great deal of detail work.

Q. You have been keeping and you do keep in touch with every department of the company's works and operations?

A. In a general way.

Q. In a general and supervisory way?

A. Yes, sir.

Q. And rather more than that, with considerable detail, do you not?

A. I try to know what is going on.

Q. I am sure you do so. Is the same thing true as to the office of the president, which you also hold, in the Cumberland Pipe Line Company, the South West Pennsylvania Pipe Lines and the Southern Pipe Line Company?

Mr. Crawford: I object to the question, and to all other questions as to the three companies named, in so far as it is sought to show that this witness is connected with the companies, as irrelevant and immaterial and not pertinent to the issues in the case, and I ask that the objection be applied to all this line of questions without repetition.

1008 Mr. Mathews: It may be so understood.

A. Yes, sir.

Q. You have stated that you attended a conference of various pipe line companies for the purpose of determining possibly a number of matters affecting those companies, and particularly at which meeting there was considered and acted upon a change in the number of barrels of oil of any one grade which would be consigned from stations. I wish to ask whether at that meeting you as the representative not only of the Eureka Pipe Line Company, but also of the other three companies of which you are president, with other representatives of these companies,—whether you were representing them at that time?

A. With the others, yes, sir.

Q. And you were then as you are now president and chief executive officer of all four of those companies?

A. Yes, sir.

Q. Is that correct?

Q. Yes, sir.

Q. Did you represent any other companies besides those four?

A. No, sir.

1009 Q. Now, at that meeting and at all times, I want to ask you if there has ever been any fixed, standardized minimum quantity of shipments which the pipe line companies which you represent have established and recognized as a minimum of any one grade of oil which they required to be reached before such oil is actually forwarded from the receiving stations?

Mr. Crawford: Will you limit that to some particular place?

Mr. Mathews: No, I want to find out whether it is anywhere first.

A. Please read the question.

(Question read by stenographer).

A. There is no particular fixed minimum. It is determined by the route over which it is to move.

Q. Where is Ewings?

A. Ewings is in Southwestern Pennsylvania.

Q. About how far from Morgantown, if you know?

A. 40 to 50 miles. I can give you the exact figures——

Q. I don't care for them. The minimum to which I have referred is shown by evidence introduced for the plaintiff at that station as 1,000 barrels of a particular grade of oil, is it not?

A. Under some conditions.

Q. Is it not true under any conditions, according to the

1010 tariffs introduced here?

A. No.

Q. Under what conditions then do I understand you to say it is true?

A. Under the particular tariffs in which that condition is mentioned.

Q. And when the oil under those tariffs is shipped via Ewings, is that true?

A. Yes.

Q. 50 or 60 miles further is the Eureka Station at Morgantown, and on oil shipped from West Virginia, Pennsylvania grade oil shipped from any stations in West Virginia via Morgantown, the minimum is 75,000 barrels, is that correct?

A. It is.

Q. And you have testified that as to the Prairie Pipe Line Company your recollection is that the minimum formerly was 300,000 barrels, and was reduced at a conference to which you referred to 100,000 barrels, is that correct?

A. Yes.

Q. And at other places under applicable tariffs the minimum is in some cases 25,000 barrels, and in some cases 50,000 barrels, that is correct, is it not?

A. Yes, sir.

1011 Q. Now, Mr. Towl, I want to ask you whether these minimums at the different stations, so far as the companies of which you are president are concerned, were not fixed and are not established simply to suit the convenience of the pipe line companies respectively, based upon quite a number of business items and reasons, and largely upon the production of oils run or to be run at the time these minimums are fixed, that is true, is it not?

A. No, sir.

Q. Upon what is it based then?

A. It is not based on the amount of oil to be run, but that to be handled under a particular grouping of lines through which the oil is to move.

Q. And that is determined by production conditions at the time, is it not, and the facilities for handling and running such oil?

A. I cannot answer that.

Q. Who could?

A. I doubt if anyone could.

Q. May I ask you then to state again concretely upon what these minimums are based, which you have participated in the fixing of——

A. The minimums are based on the amount of oils, of all oils to be handled through the groupings of lines through the various points.

1012 Q. Take the Morgantown Station for instance, the minimum there is 75,000 barrels of all grades of oil, isn't it, that route via Morgantown?

A. Of all oils that are routed via Morgantown going to the east, the minimum is 75,000 barrels.

Q. Then as a matter of fact is not this minimum fixed to meet the amount of oil that is to be handled in part by your company, and with reference to its facilities, and to the prompt transportation and prompt delivery to the refineries of such oil?

A. I cannot say that it is.

Q. You cannot say that it is not, can you?

A. It is not fixed on account of the facilities of the Eureka Pipe Line Company.

Q. You stated on direct examination that it was fixed, and it appears on cross examination that it was largely, if not entirely, as to the Eureka Company, fixed by you with reference to giving satisfactory service to the customers, the consignees, or the refineries, did you not?

Mr. Crawford: I object to the question as misstating the witness' evidence on cross examination. He has nowhere stated that it was fixed largely by him. The testimony was that it was fixed at a conference at which many carriers other than those with — he
1013 has any connection were present. It was not all on the cross examination, it was partly on the direct examination, but he has not stated what you state there, either on cross or on direct.

Mr. Mathews: I need not I hope tell the witness that I have not purposely misstated his testimony, but I have given or endeavored to give the substance of it as I understand it, and in answering the question, if the question embodies an inaccurate postulate he can so state.

A. It was agreed on on behalf of the Eureka Company by me.

Q. That is what I understood. Did you not state on direct examination that so far as that agreement was made on behalf of the Eureka Pipe Line Company by you, that it was with a view of giving satisfactory service to your customers?

A. Yes, sir.

Q. Well, is not one of the most vital elements of satisfactory service reasonably prompt deliveries?

A. Yes, sir.

Q. Then was that not an element which you considered in agreeing to these minimums on behalf of your company?

A. That was one element.

Q. Wasn't it a very strong element, Mr. Towl?

A. Yes.

Q. Was there then or at any time any objection made by the representatives of other pipe line companies to the minimums
1014 which you stated you desired fixed as affecting the Eureka's receiving stations?

A. I did not ask to have these fixed for the Eureka.

Q. Didn't you ask it at any time when it was so fixed, or did you fix it absolutely yourself without asking anybody else to agree to it?

A. It was agreed upon. The Southern Pipe Line Company, the National Transit Company, and other connecting companies, in discussing the matter said that they could not handle a less amount than that and give it in a reasonably clean condition to the patrons of the lines.

Q. But so far as the South West Pennsylvania Pipe Line Company, the Southern Pipe Line Company, the Cumberland Pipe Line Company, and the Eureka Pipe Line Company are concerned, in order to change that minimum at any receiving station, as a practical question, isn't about all you have to do to accomplish the not very difficult task of agreeing with yourself that they should be changed, and then change them?

A. I should not consider making a change without consulting with the other representatives of all of the companies.

Q. High and low?

A. High and low, all who, I thought, might know anything about the matter.

Q. But in the last analysis, after having consulted, would
1015 or would not, in the ordinary course of business, based on your experience, your determination eventuate as a minimum that would be fixed for those four companies?

A. Not necessarily.

Q. Well, don't you mean this, that you would consult with other officers of those companies and get information from them, and their views, as a basis for determining your own mind, but that after you had so determined in your own mind what you would then do would end the matter so far as those four companies were concerned?

A. I should not make any such arrangement without its being concurred in by the active men in charge of those lines.

Q. That is precisely what I am trying to get at. Isn't this the fact, that you would use every available means for fully informing yourself, and among those naturally you would derive such information as you could from the lower officials, or possibly from employees of these various companies, but after you got such information and considered it and gave weight to it, then you and nobody else would finally agree to, or state, or fix what these minimums should be, so far as these four companies are concerned—is or is not that correct?

A. The agreement with the companies would probably be made through me.

Q. Wouldn't it be made by you when it came to the actual
1016 making of it?

A. Possibly.

Q. Is it not a fact that it has been so in the past?

A. No, sir.

Q. Never?

A. I have always left any matters where the different companies with which I have been connected, where there is any difference between the companies, I have always left it entirely with the other directors.

Q. But the Board of Directors did not attend these conferences, or pass resolutions binding you before you attended the conference particularly to which you have referred, did it?

A. No, sir.

Q. Then, barring the Board of Directors of your companies, there is nobody now, and nobody in the past that could overrule your final action, is that correct?

A. There is nobody that can overrule my final action.

Q. And there has never been any attempt made to hamper it, has there, by the Board of Directors, in this respect—am I correct?

A. I do not recall any case where the different representatives of the different lines with which I am connected did not agree as to the advisability of these steps.

Q. Agree with you?

1017 A. Agree together and with me.

Q. Am I to understand that you are connected with other pipe line companies in addition to the four which I have named?

A. No, sir.

Q. Your answer was somewhat ambiguous, that is the reason for my question. Now, Mr. Towl, you have testified, or it has been testified by the plaintiff's witnesses, that the Pennsylvania crude oil going out of Morgantown moves in pipes devoted exclusively to Pennsylvania crude—that is correct, is it not?

A. Yes, sir.

Q. Then, so far as the Eureka Pipe Line Company is concerned, as to movements of oil out of the Morgantown Station through these lines, the purpose of preventing contamination could have no application whatever as to the minimum quantity being shipped, could it?

A. For some time past the Eureka Pipe Line Company has been using the No. 1 system entirely for handling Pennsylvania crude oil, and the oil is moving through there continuously.

Q. Then there is no danger of contamination?

A. There is no danger of contamination, and there is no danger of the batch being less than 75,000 barrels.

Q. No. 1 system is the two pipes that have been referred to I believe, is it not?

1018 A. Yes, sir.

Q. I do not exactly understand your voluntary addition to the answer to the next to the last question. You have stated that one of the reasons for prescribing the minimum for shipments, and concretely for fixing 75,000 barrels as a minimum at Morgantown, was to prevent contamination from the juxtaposition of columns of oil of different grades, and I ask you if there can be any danger of such contamination so far as the Eureka Pipe Line Company's lines are concerned, by shipment of Pennsylvania grades from Morgantown in any quantities, in view of the fact that the Pennsylvania grade runs from that station in lines devoted solely to its use, and which contain no other oils? You stated that there was no danger of such contamination, and no danger of its being shipped in batches of less than 75,000 barrels. Please explain what you meant by the latter words, "and no danger of it being shipped in batches of less than 75,000 barrels"?

A. A batch of oil consists of the movement of the same kind and quality of oil through a system of lines, and as there is a continual movement of that same kind and quality of oil through those two lines, and has been for a long time, the batch would not be less than 75,000 barrels. I cannot say how long that oil has been moving through those lines. It might be necessary at some future time to change the oil that is moving through those lines. If it was,

1019 that would stop the batch of Pennsylvania grade oil, and a batch of some other kind of oil would go through those lines.

Q. Well, applying the same test to the Mid-Continent oil originated with the Prairie Pipe Line Company, as the initial carrier, I understand that the Prairie Pipe Line Company handles just the one grade of oil, namely that known as the Mid-Continent—am I correct in that?

A. Yes, sir.

Q. Then so far as the Prairie Pipe Line Company's lines are concerned there is no danger of contamination by the admixture of Mid-Continent oil with any other grade, is there?

A. Where?

Q. In the lines of the Prairie Pipe Line Company?

A. No.

Q. Then the minimum, formerly 300,000, reduced to 100,000, applicable to the Prairie Pipe Line Company's receiving stations, was not established and is not now fixed with any view to preventing contamination of Mid-Continent oil while in the Prairie Pipe Line Company's lines?

A. It is a precautionary measure. If some other grade of oil should be produced in this territory that measure would stand.

Q. That is just on the theory that some time in the future
1020 if and when oil of an entirely different grade should be struck in the territory covered by the Prairie Pipe Line Company, that then at that time it might become necessary to take steps to prevent contamination with the Mid-Continent oil, is that true?

A. Yes, sir.

Q. You would hardly desire to have the Court understand from the reading of this record that that remote possibility upon a possibility was the controlling factor in causing the agreement, the original agreement as to the Prairie Pipe Line Company's minimum of 300,000 barrels, or its reduction to 100,000 barrels, would you?

A. I do not consider it a remote possibility. It was mentioned as one of the reasons why the amount was fixed.

Q. Do you wish the Court to understand that you give it as your opinion that that possibility, whether remote or not, was the controlling factor in fixing the 100,000 barrel minimum applicable to the Prairie Pipe Line Company?

A. I did not say it was the controlling factor.

Q. I am asking you?

A. I said it was one of the factors.

Q. I have no desire whatever, Mr. Towl, to get you upon the record in any manner that will be unfair to what you desire to state, and while you apparently have a contrary idea, my question is in an endeavor to get at the real facts, and to prevent such
1021 misapprehension. I now understand you to say that that was not the controlling factor in fixing the 300,000 barrel or the 100,000 barrel minimum. Am I or am I not correct?

A. It was one of the factors considered.

Q. I repeat again, and call your attention that I carefully used two or three times the words "controlling factor." This being again called to your attention, do you or do you not wish to be understood as stating it to be your belief that this possibility to which you have referred was or was not the controlling factor in the establishment of those minimums?

A. It was not the controlling factor, with the emphasis on the "the."

Q. Well, was it one of the controlling factors?

A. It was one of the factors that controlled the decision.

Q. You have again, whether purposely or through inadvertence, in your answer left out the word "controlling," although your attention was particularly called to it. I ask you again, do you mean that it was an important and controlling factor, or simply an element considered in the decision?

A. It was an element considered in the decision.

Q. I was quite sure, sir, that that was what you desired to express. I want to ask you for my information, and the Court's information, whether this question of contamination as between columns depends to any extent upon the rapidity with which the oil is pumped
1022 or forced through the pipe lines, or upon the length of time that the columns in contact remain in contact in the pipe lines?

A. The amount of contamination depends on both those factors to a certain extent.

Q. Then two columns of oil travelling in contact at a distance of 100 miles say, will become to some extent more contaminated the longer the time required to travel that distance, is that true?

A. It will take them longer to travel that distance if the line is longer and they are going at the same rate of speed.

Q. I don't think you catch my question. Read it please.

(Question read by stenographer.)

Q. That is, the longer they remain in contact while travelling that distance, is that true or not?

A. They would become more mixed if they traveled faster than if they traveled slower.

Q. That is due to the increased pressure more than offsetting the intermingling of the oil travelling more slowly and under a lower pressure, is that true?

A. It is due to the eddying in the lines.

Q. That is true though, is it, that the more rapid the travel and the greater the pressure the more intermingling takes place?
1023 A. It is not a question of pressure, it is a question of velocity. The greater the velocity the more intermingling will take place, and that will be so under practically all velocities at which oil is handled.

Q. I was under the impression that given the same grade the velocity depended upon pressure?

A. The velocity in a certain line depends upon the pressure, if all other conditions are the same. If the pressure is more the velocity will be greater, but you may have different velocities with the same pressure. Pressure is not the factor of the mixing.

Q. Will you please state what in your opinion is the average amount of contaminated oil due to travelling through a pipe line of one column of one grade, followed by one column of another grade?

A. It will depend on the grade of oil and the rapidity at which it travels, and the size of the pipe.

Q. I ask you then to assume the Pennsylvania grade of oil, fol-

lowed by the Somerset, as it is handled in actual practice by the Eureka Pipe Line Company in West Virginia?

Mr. Crawford: For what distance?

Q. From Tug River to Morgantown, about 170 miles, taking Tug River for the Somerset origin and Hamlin for the Pennsylvania?

A. There would be no contamination until its passed Ham-
1024 lin. From Hamlin on there would probably be somewhere between 100 and 1000 barrels for each batch of Pennsylvania oil put in the line.

Adjourned to Tuesday, December 9, 1919, at 10 o'clock A. M.

Last Plaintiff's Exhibit 45.

1025 THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et al.

New York, December 9, 1919.

Met pursuant to adjournment.

Appearances:

For the Plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.
For the Defendants: S. E. Avis, W. Gordon Mathews.

FORREST M. TOWL resumed the stand.

Cross-examination.

Continued by Mr. Mathews:

Q. Mr. Towl, you are the same Mr. Forrest M. Towl who testified on behalf of The Eureka Pipe Line Company in its application before the Public Service Commission of West Virginia for an increased rate as to its gathering charge, are you not?

A. Yes sir.

Q. My recollection is that you testified on September 9,
1026 1919?

A. Yes sir.

Q. I notice that your counsel present at this hearing has a copy of your testimony as given then, and in questions which I am asking you relating to such testimony I wish to say that you are at entire liberty to consult either that copy or the original, which is in my possession at the hearing for the purpose of refreshing your recollection. You then testified I believe that The Eureka Pipe Line Company had at Morgantown at that time thirty or forty storage

tanks or tanks for holding oil of the capacity of 35,000 barrels each, is that correct?

A. The number of tanks there—I cannot give the exact number. I should say there were in that neighborhood.

Q. Can you not give the exact number now even though you were unable to then?

A. I have not looked it up since. I can obtain that from the records.

Q. You so testified at the hearing referred to, did you not?

A. I remember that I testified that there were a number of tanks.

Q. I have just said that you are at liberty to refer to the testimony then given.

Mr. White: I will show the witness the answer given then.

1027 (handing paper to witness.)

A. I should say there were between thirty and forty tanks of the capacity of about 35,000 barrels each. That is in my testimony.

Q. Your Company, The Eureka Pipe Line Company, also has sixty-five or seventy stations in West Virginia, at each of which there is a tank or tanks, is not that correct?

A. There are tanks at I believe all our stations.

Q. And you have sixty-five or seventy stations?

A. We have a large number of stations.

Q. Sixty-five or seventy?

A. About, I should think at least that many.

Q. Are these tanks uniform in size?

A. No sir.

Q. What sizes are they?

A. Some of the stations have very small tanks, and others have up to 37,500 capacity.

Q. What do you mean by "very small tanks?"

A. I think some of the smaller stations have tanks of only a few hundred barrels. I cannot say without looking up the matter. There are some very small tanks at some very small stations.

Q. Most of them, however, are much larger than that, aren't they?

A. At the large stations they are larger. At the smaller

1028 stations they are small tanks.

Q. Can you not give any average size?

A. Not without going over and taking the sizes and averaging them.

Q. Can you give the storage capacity of the tanks in West Virginia other than those at the station of Morgantown?

A. I can obtain the figures. I cannot give it off-hand now.

Q. Can you do so approximately at this time?

A. I can guess at it. I should say somewhere between 2,000,000 and 3,000,000 barrels.

Q. In addition——

A. Not in addition to Morgantown,—altogther.

Q. Somewhere between 2,000,000 and 3,000,000 barrels including tankage at Morgantown?

Mr. Crawford: I object to the question. I move to strike out the preceding answers on the ground that they are guesses and not testimony, and I object to the last question on the ground that it calls for a guess on the part of the witness.

Mr. Mathews: Counsel desire to state that the question certainly did not call for a guess, although the answer took the form of a guess as to the size.

1029 Mr. Crawford: It calls for a guess in the sense that it repeats a request for information which the witness says that he cannot give except by guessing. Therefore I think it calls for a guess.

A. Yes, it is a large amount.

Q. Can you obtain the exact information as to the total tankage of your company excluding the tankage at Morgantown? I mean in West Virginia?

A. Yes sir.

Q. I would request and call for, and for the purpose of convenience I will designate this as request Towl No. 1:

a. The exact storage capacity of the tankage of your company at Morgantown.

b. The exact storage capacity of your company in tankage at West Virginia elsewhere than at Morgantown.

Mr. Avis: And also the following:

c. The amount of your tankage at Morgantown used solely for the several grades of oil, namely, the amount of tankage devoted entirely to Mid-Continent Oil, the amount of tankage devoted entirely to Corning Oil, and the amount of tankage devoted entirely to Somerset-Cabell Oil at Morgantown.

Q. May I ask if you can and will obtain and furnish counsel for the defendants with this information?

A. I can.

1030 Mr. Crawford: Do you want it before the next hearing?

Mr. Mathews: Yes, at the earliest moment convenient, I should think.

The Witness: Yes.

Mr. Avis: If we do not have any other hearing, it could be filed.

Q. Are you able, Mr. Towl, to obtain and furnish the court with information as to the total storage capacity of your pipe line system in West Virginia, exclusive of the tankage but inclusive of both trunk lines and gathering lines?

Mr. Crawford: I object to the question unless the counsel defines what he means by storage capacity. The evidence in the case thus far shows that no storage takes place in the strict sense of that term, and I think he should define what he means and not use a term which has become ambiguous in the light of the proof.

Mr. Mathews: Counsel for the defendants wholly disagree with

counsel for the plaintiff as to what the proof thus far taken shows in this respect; but without discussion on that point, state that they mean by storage capacity, the quantity of oil capable of being placed at any one time in the entire system of The Eureka Pipe Line Company's lines in the State of West Virginia, both trunk and gathering pipes.

1031 The Witness: I believe our records are in such shape we can give you the physical contents of the total amount of pipe that we have laid. There may be some lines that we have no way in which we can get oil for them. I have one in mind that is practically abandoned.

Q. I then request and call for, designating it for convenience request Towl No. 2, at the time you furnish the information heretofore called for, you add thereto separately such information as to the capacity of your pipe line system in West Virginia. Will you do so?

A. Yes sir.

Q. Have you or can you obtain this information, Mr. Towl, namely, how much of all of the different grades of oil was in the lines of The Eureka Pipe Line Company and its tanks, on June 30, 1919?

Mr. Crawford: That has already been covered by a requisition. That has been covered by one of Captain Avis' requests most unquestionably. Mr. Swisher has gone back to Oil City to work on it.

Mr. Avis: It won't do any harm to make the request from the witness. I am not clear about it, but it won't hurt to get it.

Mr. Mathews: The witness, if that is true, can show that by his answer.

1032 Mr. Crawford: Go on. It does not do any harm.

(The question was repeated by the stenographer.)

A. I believe that our records will show the credit balances and what we have in our over and short account, water and everything that we have in our system.

Q. If a former request made by Captain Avis, of counsel for the defendants, covers this request it may be disregarded. But if when counsel examine the record they find that it is not covered, then in the latter event I wish to make the request that in connection with the information heretofore requested of you, you obtain and furnish information showing the exact amount of oil of all different grades in your system, pipe lines and tanks as of June 30, 1919, and also the amount of credit balances carried or outstanding against the same as of that date. If that has not already been requested and is not furnished by Mr. Swisher, will you see that it is furnished with your information?

A. Yes sir.

Q. In the two preceding questions I endeavored to make it plain that I mean the oils in the whole of your system, but that there may be no misapprehension about this, I desire to state that I wish

included in such information all oil in the gravity lines of the Eureka at that time, as well as otherwise.

A. We cannot show the oil in the gravity lines. Those
1033 lines are in general not full.

Q. Suppose they are not full?

A. We don't know how full they are, whether they are quarter full or half full or one-eighth full, or in some places they may be entirely filled.

Q. But aren't they measured in the tanks before they go into the gravity lines?

A. They are measured at the tanks before they go into the gravity lines, but there are losses before they get to any particular through lines where we can check up those measurements.

Q. It don't make any difference whether the lines are full or half full, does it?

A. Yes sir.

Q. Why?

A. We run oil into a gravity system, and then go out in the morning and they start in and run from a number of wells all day. There may be several men running it into the same gravity system. We don't know how much of that oil gets into our tanks. It is only by taking a month at a time that we can reasonably tell how that oil is.

Q. That may be, but that oil is measured and you become responsible for it upon its entry into the gravity lines, do you not?

A. It would show in the credit balances.

1034 Q. Then I do not understand the statement, if it does show in the credit balances, that you cannot tell what was put into the lines, the gravity lines.

A. We don't know.

Q. You know what you are responsible for having, don't you?

Mr. Crawford: You did not ask him how much was put into the gravity lines. I think I am right in saying you asked him how much was in the gravity lines.

Q. In making an inventory or calculation from your books of the oil in the system of The Eureka Pipe Line Company at any given time, do you treat the gravity lines as empty?

A. I cannot tell you definitely whether we treat them as empty or not.

Q. Do you know any officer of the company who can tell?

A. I cannot say without going back over the record whether they are treated as empty or partly filled or half, or whether we take any account of the oil that is in those lines until it reaches the first tank in our gathering system. At the first tank of our gathering system we consider that the oil is in our system.

Q. I understood on yesterday from yourself as a witness, as well as from testimony of other witnesses introduced by the plaintiff, that you considered the oil is in your system and that you were responsible for it and that it became a credit balance for the owner
1035 as soon as it was drawn from the producers' tanks and entered the gravity lines, is that correct?

A. It is considered as a credit balance as soon as it is drawn from the tanks.

Q. Then your records must show it as a credit balance or as belonging to your company itself, one or the other, at all times after it enters the gravity lines, is that not true?

A. It will show the credit balance in our lines, but whether it will show as a certain amount of cubical oil or whether it will appear in our over and short account, I cannot say.

Q. The credit balances of your company plus the over and short accounts of your company at any given time is supposed to represent the oil in the system of the Eureka Pipe Line Company, is it not?

A. There may be some oil in the gravity lines that is not included in that. I cannot tell you.

Q. How can that be if it is true as you have just stated it that upon the entry of the oil into the gravity lines of your company it immediately becomes a credit balance?

A. A credit balance represents the oil for which we are responsible. I do not know whether that takes into account any oil that was in the gravity lines before it reached the first tank or not.

1036 Q. Then in order that there may be no possibility of misunderstanding, I wish to request that when you furnish the information heretofore called for, showing the oil which according to the books of the Eureka Pipe Line Company was in its system as of June 30th, 1919, if there was any other additional oil at that time in gravity lines, that you cause the statement you furnish to show that fact. Do I make myself plain?

A. Yes, sir. It can show the fact, but if such is the case I doubt if it can show the amount.

Q. Mr. Towl, when your company inventories the oil in its system to ascertain whether it has a sufficient amount therein to comply with the laws of West Virginia as to the company retaining at all times sufficient oil to meet its credit balances, does your company disregard or take into consideration oil which at such time may be in the gravity lines of the company? In asking this question I mean of course in referring to oil in the lines of your company not under I. C. C. tariffs?

Mr. Crawford: I object to the question on the ground that the testimony shows that all the oil in the possession of the company is under I. C. C. tariffs.

Mr. Mathews: I think the objection is probably good. I will withdraw the question.

1037 Q. In taking an inventory of the oils in the lines of the Eureka Pipe Line Company, which it is obliged to retain on hand at all times to meet its credit balances as provided by law, do you disregard or take into consideration oil in the gathering lines?

A. I believe we disregard some of it and take into consideration other of it in the gathering lines. I will look the matter up and let you know definitely later.

Q. Do you mean to say then that you do one thing one time and another thing at another, or that each time you consider part of the oil in the gravity lines and disregard part of the oil in the gravity lines?

Mr. Crawford: I object to the question on the ground that the witness apparently is now stating as to what he believes and not his knowledge, and the question is calling for knowledge. He states "I will look the matter up," and I submit on his present state of imperfect knowledge as to that point, that the answer to any question in regard to it should be deferred until he has had an opportunity to consult the records and other persons connected with the company who have more personal knowledge; and that the question as asked in view of what he has stated as to his lack of knowledge is incompetent.

Mr. Mathews: This is cross-examination and the witness is the president of the company. He has stated what he believes, but if the witness will state that he cannot answer this question without investigation I will pass to another question.

Q. I will ask you at this time to answer the foregoing
1038 question if you can. Can you do so?

A. I can not.

Q. Then I ask you as request Towl No. 4, that when you furnish the information heretofore called for you give the exact fact of the company in making such inventory, showing whether it considers or disregards oil in the gravity lines of the company at the time of the inventory, and if it does one thing one time and another thing another time in this regard, to make that fact clear. Will you do so?

A. Yes, sir.

Q. Mr. Towl, are you able to state at this time what was the highest credit balance and also what was the lowest credit balance of the Cumberland Pipe Line Company at any one time during the year ending June 30th, 1919, for Somerset oil?

A. I can not.

Q. Can you state what was its average balance?

A. I can not.

Q. Can you obtain such information?

A. I believe I can.

Q. Then I would request and call for as Towl request No. 5 to be given with the information which you have heretofore agreed to furnish, a statement showing the highest credit balance and the lowest credit balance of the Cumberland Pipe Line Company for Somerset oil at any one time during the year ending June
1039 30th, 1919, and also the average credit balance during such years. Will you do so?

A. Yes, sir.

Q. And I would make the same request and call it Towl request No. 6, as to the credit balances, highest, lowest and average during the same period of the South West Pennsylvania Pipe Lines for all grades of oil. Will you do so?

A. Yes, sir.

Mr. Mathews: In order that Captain Avis, who is compelled to leave at noon, may hear at least a portion of this witness' evidence with reference to the schedules filed on yesterday, especially marked Plaintiffs' Exhibit 45, Sheets, 1, 2 and 3, I will at this point to leave the more or less connected and orderly examination and jump to that exhibit for a few questions.

Q. Mr. Towl, Plaintiffs' Exhibit No. 45, on sheet 1 purports to give an analysis of the "Gathering Lines Expenses," of the Eureka Pipe Line Company for the year ending June 30th, 1919, while sheet 2 purports to give an analysis of the "Trunk Lines Expenses" of the Eureka Pipe Line Company for the year ending June 30th, 1919. Will you please state what is meant on sheet 1 by the words "Gathering line?"

A. The system of the Eureka Pipe Line Company is divided into trunk lines and gathering lines, at the request of the Inter-
1040 state Commerce Commission as far as possible. They requested us to make a division of our property and call parts trunk lines and certain parts gathering lines. Where oil was handled in the gathering system they requested us to make an adjustment or a charge. Where it was handled in the reverse way, they requested us and the rule was that if a line was used more than 50 per cent of the time for trunk line purposes, it was to be considered as a trunk line. And if it was used for more than 50 per cent for gathering purposes, it was to be considered a gathering line. And then later they changed that 50 per cent and told us to do the best we could, and we have done the best we could.

Q. Your answer shows that there is a division or attempted division by your company between those gathering expenses and those trunk line expenses, but you have not answered the question as to what is covered and meant on this exhibit by "Gathering lines."

A. I went over the whole system from all the maps and with the other members of the company, we divided it as closely as we could according to the use to which the lines were placed. I could not tell you just where the separation was without going over those matters again.

Q. That is as full an answer and as full an explanation as you can give at this time as to what is meant by the words on
1041 this exhibit "Gathering lines?"

A. Yes, sir.

Q. I will ask you what is meant on sheet 2 by the words "Trunk lines."

A. The words "Trunk lines" mean the lines that are not gathering lines.

Q. Which are they?

A. Those that are not gathering lines.

Q. Is that as full an explanation as you can make of the use of the words "trunk lines" on this exhibit at this time?

A. Yes, sir.

Q. I note that each of the sheets referred to, namely, sheet 1 and sheet 2 contain items under the same general heads, namely, "Maintenance Expenses," "Transportation Expenses," and "General Ex-

penses," and each of these three general heads contains what appears to be identically entitled subheads on each sheet. Taking for illustration the first subhead on sheet 1, under "Maintenance Expense," No. 201, we find "Superintendence." And on page 2 under the same subhead No. 251, we find "Superintendence." On sheet 1, the "Gathering Lines" sheet, such "superin-dence" is put down at $23,022.13; while on sheet 2 "Trunk Lines," the same item is put down at $5,064.43. Will you please explain in detail upon what
1042 basis the total of "Superintendence" expense of your company as represented on this exhibit by this item is apportioned and allocated as between the gathering lines and the trunk lines?

A. The item "Superintendence," No. 201, and the item "Superintendence" No. 251 are charged per instructions of the Interstate Commerce Commission contained in clauses 201 and 251 of their instructions; and the No. 201 refers to the part of the superindendence expense of the gathering lines as we divided them, and the No. 251 is corresponding to the trunk lines as we have divided them.

Q. Mr. Towl, I seem to be very unfortunate in framing my questions to you so far as getting an answer is concerned. I wish to explain that the first question asked on this line, asked as plainly as I can for you to give not by whose direction or in accordance with whose instructions these items were so apportioned, but simply asked you to state upon what basis they are so apportioned?

A. I have stated that.

Q. You have stated that the Interstate Commerce Commission by its regulations required you to separate them in some way and to enter them on the books of your company in some way. I don't care anything about that. I want to know what is the actual basis, percentage, days of work, mileage, amount of time employed, quantity of work done or territory covered, or whatever the basis may be. Please explain what it is?

1043 A. What is the question?

Q. (The question was repeated by the stenographer.)

A. There are probably different bases used in dividing different items of expense. Sometimes it might be one of the items you mentioned and sometimes another. It is our endeavor to divide it as near as possible according to the service rendered, by the division of gathering lines and trunk lines as we have made it.

Q. But I have only asked you so far as to a single carefully designated item, the first one appearing on each of these two sheets, and I ask you again to state if you can what was the actual basis upon which that particular item was so apportioned between "Gathering Lines" and "Trunk Lines."

A. I can answer it no different than my previous answer.

Q. Can you state any basis or principle whatever by which $23,022.13 of this single item "Maintenance Expense, Superintendence," is charged on this Exhibit No. 45 the "Gathering Lines" expense, while on sheet 2, the same item shows only $5,064.43 charged to "Trunk Lines" expenses?

A. I cannot state definitely without going into the analysis of those charges.

Q. Then you personally did not prepare this Plaintiff's Exhibit 45, and am I to understand that you personally are wholly without information or knowledge as to the exact basis upon which
1044 these two items, Nos. 201 and 251 were actually figured, separated and apportioned as between "Gathering Lines" expenses and "Trunk Lines" expenses, or how these two amounts of $23,022.13 and $5,064.43 were arrived at?

A. Probably the sums of a large number of items. I can not without going into the analysis of every case in making those out, answer the question.

Q. I will ask the stenographer to repeat the question.

(The question was repeated by the stenographer.)

Q. Please try to answer the question.

A. I did not personally prepare Plaintiff's Exhibit 45. I am not without knowledge as to how those were arrived at.

Q. Do you know the basis of calculation upon which they were arrived at?

A. I have been over the matter with our accountants and we have endeavored to divide those items up according to the service rendered, as dividing our system in the "Trunk lines" and "Gathering lines." I have been over that with our analysis men.

Q. Didn't you reach any basis of percentage to govern that particular statement?

A. There may have been a percentage on some one or more items in it. There may have been some other reasons as to the items.

1045 Q. I have never asked you a question referring to any item except the first item on each of these two sheets, and I now ask you again whether you can state upon what basis, percentage or otherwise the figures after that item on each sheet were reached?

A. I am answering you and have been answering you according to that item, and I cannot state any more definitely. The question of analysis, if you were to go into the analysis, we can bring you the analysis of those accounts.

Q. No, I do not at this time question you about the analysis. I assume that definite figures were reached as to the "gathering lines" and definite figures were reached as to the "trunk lines," under this item of "Superintendence" upon some basis of percentage or otherwise; and I ask you whether you can state what that basis or percentage was?

A. Percentage or otherwise; or otherwise.

Mr. Avis: That is an answer and not a question?

The Witness: That is an answer.

Q. Am I to understand that this apportionment, still speaking as to this same item of "Superintendence," was simply fixed by your company as what it thought was about the proper basis and not upon any fixed standard basis adopted by you?

A. Repeat the question, please?

Q. (Repeated by the stenographer.)

A. This item is the result of a number of other items
1046 which are divided on our analysis sheets.

Q. Have you made as full an answer and given as complete an explanation as to the basis upon which these particuar items Nos. 201 and 251 were apportioned and arrived at as you are able to give, Mr. Towl?

A. Without going back to the analysis sheets.

Q. Without going back to the analysis sheets you don't know what the basis which resulted in these figures was, do you?

A. I cannot tell just what the basis of each item that goes to make up the item you referred to was.

Q. I understood you to say awhile ago, although I had limited my questions to one item, that among the numerous items on these two sheets 1 and 2, different bases and proportions and percentages were used at arriving at the totals placed opposite each item. Was I correct in so understanding?

A. I don't understand that question. Please repeat it.

Q. (Repeated by the stenographer.)

A. One basis may be used for one statement that goes into——

Q. (Interrupting.) Please do not state what may be done. You can state whether it was and is.

A. Different statements that go to make up these items under the sub-heading are divided in a different manner.

Q. Are you able to state what was the actual basis upon
1047 which any of the figures indicating dollars and cents on Sheets 1 and 2 are used in arriving at such figures as between the "gathering lines" and the "trunk lines"?

Mr. White: Your question applies to items 201 and 251?

Mr. Avis: All the items.

Q. This last question considers any item on these pages?

A. I cannot divide those statements up according to the classification without going back of this paper and my memory.

Q. Then you do not know what basis was used in arriving at the figures set down opposite any single item on either page 1 or page 2, is that correct?

Mr. Avis: We would like an answer of yes or no to that, and then an explanation if you have any to give.

A. I can only say that with reference to one item——

Mr. Avis (interrupting): Can you answer that question by yes or no and then explain it? It asks for a direct categorical answer, whether you know. Read the question back.

Q. (Repeated by the stenographer.)

A. No, it is not; in reference to the item of depreciation a general percentage was used of the value of the lines based on instructions 213 and 263 of I. C. C. Rules.

Q. Is that the only item that you know anything about the basis of on either sheet? If not, mention any other items which you do know the basis of?

A. Certain parts of the other statements were based on a
1048 percentage, other parts were based on other considerations.

Q. I note, of course, that percentage figured in some of these items, Mr. Towl. But you still have not answered my question and I reluctantly again request the stenographer to read it to you, adding that if there are any other items on either Sheet 1 or 2 that you know the basis upon which the figures opposite such items were arrived at, to please state what those items are and what the basis was?

A. I cannot give the various charges going to make up any of these items.

Q. Mr. Towl, have you a copy of Plaintiff's Exhibit No. 4 in your hand or available?

Mr. Crawford: There is the original exhibit (handing papers to witness).

A. Yes, sir.

Q. I ask you to turn to Sheet 2, to the item headed, "Oil produced in West Virginia (but not run by the Eureka Pipe Line Co.) and delivered to other carriers on I. C. C. tariffs," at Marcus Hook, Pennsylvania, Eureka I. C. C. tariff 158, amounting to 229,099.60 barrels and showing an earning of .1334 per barrel, and aggregating in dollars and cents $30,561.81. I ask you whether your exhibit No. 45 apportions the earnings and expenses of the Eureka Pipe Line Company in handling this oil, and what, if any, apportionment it shows of the profit therefrom as between "gathering lines" and "trunk lines"?

1049 A. I believe there is an apportionment of that between the gathering lines and the trunk lines. I cannot tell just what it may be without going back to our records.

Q. Can you tell where it appears if at all, that is in what item or items in your exhibit Plaintiff's Exhibit 45?

A. It appears in Plaintiff's Exhibit 45, Sheet 3, in "Tariff Revenues."

Q. It does not appear on either Sheet 1 or 2, does it?

A. Sheets 1 and 2 are expenses. This is a revenue.

Q. I understand. I want the record to show it does not appear on Sheet 1 or 2?

A. No, sir.

Q. Does it anywhere appear how either revenue earned by the Eureka Pipe Line Company from the handling of this item, or the expenses incurred by it in handling this item were divided or apportioned between gathering lines and trunk lines?

A. The revenue appears in tariff revenue in Sheet 3.

Q. That question certainly requires a yes or no answer, Mr. Towl?

A. It does not appear how they are divided between gathering and trunk lines.

Q. Do you know how they are divided?

A. I don't remember how they are divided.

Q. Do you know the basis upon which they were divided?

A. I do not remember. I did know at the time.

1050 Q. As between "gathering lines" and "trunk lines"?

A. Yes, sir.

Q. Now, that shipment of oil to Marcus Hook went on an I. C. C. tariff No. 158, and your company received no gathering charge on that, did you?

A. We received no tariff gathering charge on that amount of oil. It was probably handled to some extent by our gathering system. There would have been a charge to the trunk line system and a credit to the gathering line system for a certain amount in all probability. I cannot say that any of that moved through the gathering line system without further investigation. I believe that it did.

Q. How did it get to the trunk line system if it did not?

A. I cannot say whether the initial line through which it passed is considered as a trunk line or a gathering line.

Q. Don't you know that, Mr. Towl?

A. I cannot tell you.

At this point Mr. Avis withdrew.

Q. Mr. Towl, I ask you to look at the map marked Plaintiff's Exhibit 3, Third Map, and to indicate on that map the course which this particular shipment of oil for Marcus Hook, Pennsylvania to which we have referred would take from the point of production through the lines of your company?

1051 Mr. Crawford: What is the question?

Q. (Repeated by the stenographer.)

A. It is delivered to our company at our Cabin Creek station by the parties who tender it for shipment. It would go from our Cabin Creek station through our Mill Creek station, and on through our system past Flat Fork, Elm Run, Braden, Downs, on to Morgantown.

Q. How much of your system through which you have just stated this oil passed is gathering lines?

A. I cannot tell until I refresh my memory from a map on which we divided our gathering line from our trunk lines.

Q. I was under the impression that you, or if not you, certainly some other witness for your company, had detailed with reference to this map, what you termed your trunk lines. Can you not tell from an examination of third map at this time?

A. That does not show the division of the trunk lines and the gathering line system.

Q. Do you mean to say that none of the maps introduced by the plaintiff up to this time show on their face or indicate to you with your knowledge of your own system as to what parts thereof are trunk lines and what part gathering lines?

Mr. Crawford: Mr. Mathews, that has been testified to here at length on the introduction of the maps.

Mr. Mathews: I am sure of it, and yet the President of the Company said that he could not tell.

1052 A. It has not been testified that these maps are trunk lines or gathering lines. Those are the principal lines.

Q. Well, don't you know from an examination of the third map now before you what you yourself consider your own company's gathering lines and what you yourself consider your own company's trunk lines?

A. I cannot tell without looking at the map where we divide it. I know some parts of it are considered trunk lines. I cannot tell just what part is considered gathering lines.

Q. You know that this particular shipment of oil to Marcus Hook of necessity passed in part through the gathering lines of your company and in part through the trunk lines of your company, do you not?

A. I believe that it did, I could not say definitely where the division is made. I cannot say definitely just what lines on that map are trunk lines and what are gathering lines.

Q. Then without reference, if your information does not go that far, as to which particular lines through which this oil passed are trunk and which are gathering lines, you do know that it of necessity passed in part through gathering lines and in part through trunk lines, do you not, of your own company?

A. I believe it did.

Q. Don't you know?

1053 A. I cannot tell, and I cannot remember just what division we made between the trunk lines and the gathering lines.

Q. With all the maps that have been introduced by the plaintiff present now at this hearing, and you having heard the testimony of the witnesses examined for the plaintiff, am I to understand that you still are unable to say definitely that this particular shipment of oil did not pass in part through the gathering lines of your company, and in part through its trunk lines?

A. I have stated that I believe it did pass through part of the gathering lines and part through the trunk lines. I cannot state what the division was or where it was. I know that it passed through some part of the trunk lines.

Q. And you know that it passed through some part or parts of the gathering lines?

A. I believe it did. I cannot say where the division occurs.

Q. Without reference to where the division occurs, do you, or do you not know that it passed through parts of your gathering lines?

A. I believe it did. I cannot say definitely without refreshing my memory from the actual division, the way we divided the system.

Q. Are you able to tell either from your exhibit No. 45 or otherwise, what proportion of the revenue derived from the

1054 handling of this particular shipment of oil to Marcus Hook was apportioned through trunk lines' revenues and what part was apportioned to gathering lines' revenues?

A. Our records will show. I cannot tell you.

Q. I will ask that the question be repeated.

Q. (Repeated by the stenographer).

A. I cannot tell from this exhibit.

Q. Or from any other information which you now have?

A. No, sir.

Mr. Crawford: He did not say that.
Mr. Mathews: That is a question.
Mr. Crawford: I think he said quite to the contrary.
Mr. Mathews: That is a question.

Q. What do you mean by "now"? Here at this minute?

Mr. Mathews: I mean by the word "now" as it usually and ordinarily means.

A. If you mean by "now" the records before us in this case, I cannot tell you. If you mean by "now" the records of our company, I can tell you.

Q. This case is being tried from such records of your company as filed in the case and from such other information as we can obtain from witnesses, and my question was not whether still other records of your company might or might not give that information, but whether you were able to give it?

1055 Mr. Crawford: I object to the statement of counsel, because the case, at least so far as cross examination goes, has been tried almost exclusively upon the theory that the witnesses were to go to their records, and there have been numberless requests for information from the records, and one exhibit was produced which has been used in connection with the cross examination, and never until this time has there been any suggestion that in so complicated a business as this the witness on the stand should, without any assistance of his records answer all questions.

Mr. Mathews: It was only yesterday afternoon that Exhibit No. 45 was introduced in this case, and counsel for the defendants are conducting the cross examination today of necessity with reference to what that exhibit shows, and where it shows nothing are endeavoring to ascertain from the President of the Eureka Pipe Line Company what it means.

Mr. Crawford: What I object to is your statement as to how this case has been tried heretofore, and I take issue with you that it has been tried in the way you suggest, and the record shows it has not been so tried.

Mr. Mathews: Counsel for the defendants do not desire to prolong a discussion on the record which does not seem to them to have anything to do with the question asked.

Q. Referring to Plaintiff's Exhibit 4, the item immediately following the Marcus Hook shipment, namely, the shipment to Philadelphia, Pa., I. C. C. No. 149, I will ask you if you know
1056 whether or not the oil embraced in that shipment passed in part through the gathering lines of your company, and in part through its trunk lines?

A. The shipment in question passed through the lines of the company from Cabin Creek to Morgantown, over the same route as the previous shipment. From Morgantown it passed through different lines. The first movement moves through the lines of the Pure Oil Pipe Line Company, and the second moved through the lines of

the Eureka Company out to the State line, and then on through the Southern Pipe Line Company's lines to destination.

Q. Am I right in assuming that for the same reasons which you have given with reference to the Marcus Hook shipment, that you are equally unable to tell as to the Philadelphia shipment, how far it traveled through your gathering lines and how far it traveled through your trunk lines?

A. Yes, sir.

Q. And you know no more about the route, the distance, etc., of this Philadelphia shipment than what you have stated as to the Marcus Hook shipment, is that correct?

A. Yes, sir.

Q. Mr. Towl, do you apportion the revenues of your company between the gathering lines and the trunk lines?

A. Yes, sir, when they passed through both the gathering lines and trunk lines that is divided.

1057 Q. Upon what basis?

A. Sometimes on the basis of the distance of the lines passed through, and sometimes in the way of other facilities, as pumping stations, etc.

Q. Is there no fixed basis for apportioning the revenues between the gathering lines and the trunk lines?

A. There is a basis that is fixed by the division under which it moves; the same basis applies to the same kind of a movement. It is not a changeable basis, if that is what you wish.

Q. Can you state what that basis is?

A. The various factors that go into the division of it. I could not state off hand just what the factors are.

Q. By reference to the factors which go into it, can you state the basis itself?

A. The use of the facilities of the system.

Q. What do you mean by "use"?

A. If the oil passes through the lines considered in the gathering system and the revenue is credited up to the trunk line system, then the trunk line system would turn over to the gathering line system a certain portion of the revenue for that movement. If it used any of its facilities, like the pumping stations or any other facilities, they would handle it in the same way.

Q. Upon what basis is that certain proportion arrived at?

1058 A. The services rendered.

Q. Well, how do you arrive at a division, say of $100 revenues derived in part from the use of gathering lines and in part from the use of the trunk lines? Is there any fixed basis for determining that division, Mr. Towl?

A. On a certain movement there would be a basis fixed by the conditions under which it moved.

Q. Then I ask you if you are able to take any certain movement of oil within your knowledge during the period in question and state what the basis applicable to that certain movement will be?

A. If you take the movement referred to here, or any other definite movement and divide the revenue in a definite manner.

Q. Please take a definite movement and divide it in a definite manner if you are able, mentioning the definite manner that your company actually used?

A. I will take this movement and divide it——

Q. Please do so?

A. At some time when I have the records before me, if you ask me to.

Q. You are not able to do so now?

A. No, sir.

Q. Mr. Towl, please examine Plaintiff's Exhibit 45, page 3, and note the item of the amounts paid in satisfaction of the Freud-
1059 enberg Company of $45,000. Do you know, or can you tell from Plaintiff's Exhibit 45, how that item was apportioned as between trunk lines and gathering lines, and if so, why it was so apportioned?

A. It does not appear that it has been apportioned between trunk lines and gathering lines.

Q. You understand that that was carried just as a general item of cost?

A. It is carried in profit and loss and suspense account. We hope to get something back on that some day, and then it will continue in that suspense account until we close it out. When we do, it will all probably go into the gathering lines.

Q. As a matter of fact that $45,000 represents the amount paid for a certain claim asserted by suit of the Freudenberg Oil Company against the Gardner Oil & Gas Company and the Eureka Pipe Line Company and the South Penn Oil Company, does it not?

A. You are more familiar with that than I am. I believe so.

Q. I am not on the stand?

A. I believe that is the fact.

Q. And the Eureka Pipe Line Company in the settlement of that suit paid and took an assignment of the plaintiff's claim for a larger amount than the sum of $45,000, did it not?

A. I cannot give you the details of it at present. My memory does not serve me on that.

1060 Q. Look at Plaintiff's Exhibit 45, Sheet 3, Item "Taxes" amounting to $347,734.74. Are those taxes apportioned between the gathering lines and the trunk lines of the Eureka Pipe Line Company?

A. They are not apportioned in Plaintiff's Exhibit 45, Sheets 1 and 2.

Q. As a matter of fact, are they apportioned at all, Mr. Towl?

A. I cannot say whether we ever divide them up as to gathering lines and trunk lines, or not.

Q. And of course if you cannot say that, if they should be so divided you don't know on what basis?

A. No, sir.

Q. I will ask you whether that item of $34,734.79 taxes does not include Federal Income tax, and excess profit tax, and the West Virginia excise tax imposed against your company?

A. It includes all of our taxes.

Q. Including those I have enumerated?

A. Yes, sir.

Q. I take it from your former testimony that you are not able at this time to give the amounts of the various taxes covered by this item. Is this correct?

A. I cannot remember them, the amounts, no.

Q. Can you obtain from the records of your company a statement showing the amount credited in this item of $347,-
1061 734.79 giving the parts thereof which constitute:

A. West Virginia State and Charter Tax.
B. Federal Capital Stock Tax.
C. West Virginia Excise Tax.
D. General property tax.
E. Federal Income Tax.
F. Excess War Profit Tax.
G. Any other taxes paid by your company.

A. I can give you an analysis of that statement.

Q. I would request and call for this information to be furnished with that already asked for under the head of "Towl Request No. 7." Will you supply that at the same time?

A. Yes, sir.

Q. On Plaintiff's Exhibit 45 the various numbers of different items there beginning with the number 201 and ending with the number 289, those are the numbers and headings prescribed by the Interstate Commerce Commission to be furnished by corporations subject to its regulations and known as "Subsidiary Accounts," are they not?

A. I cannot tell you what they are known as. These are the divisions that we are instructed to keep of our accounts.

Q. You don't know how the Interstate Commerce Commission designated them?

A. I do not remember.

Q. Mr. Towl, I will ask you to again refer to Plaintiff's
1062 Exhibit 45, Sheet 1, Item No. 231, "General Office Salaries," and Sheet 2, Item No. 281, "General Office Salaries." On Sheet 1 of the "Gathering Lines" expenses, this item is $31,327.74. On Sheet 2 it is only $7,829.68. Included in these items is your own salary as President of the Eureka Pipe Line Company?

A. At least part of it. I am not sure whether it is all included in those two items or not.

Q. If it is not included there where else would it appear?

A. You would have a lot of work that is not expense work, as increasing our construction work and work of that kind. It may be that, some of it may be charged up to it. I cannot tell without going into the record and seeing just how it is charged.

Q. Don't you know from this exhibit the item or items which cover your own salary?

A. I do not remember whether it is all included in those items or not.

Q. Do you know whether it is apportioned between the gathering

lines' expenses and the trunk lines' expenses as set forth on this exhibit?

A. At least part of it is.

Q. Do you know how or upon what basis it is apportioned?

A. I cannot tell without refreshing my memory.

Q. Referring to No. 202, Sheet 1, "Repairs of Pipe Lines" amounting to $103,246.17, and on Sheet 2 of "Trunk Lines" ex-
1063 penses, Item No. 252, "Repairs of Pipe Lines", amounting to $2,069.67, do you know how or upon what basis those figures are apportioned and arrived at as between gathering and trunk lines' expenses?

A. On the basis of the actual repairs and the time sheets and other items that go into making up the item on what we consider the gathering lines, and what we consider the trunk lines.

Q. Do you mean that $103,246.17 was actually expended upon what you consider the gathering lines of your system, is that correct?

A. Yes, sir.

Q. And do you know what is included in the word "repairs"? Does that include expenses, or not?

A. Not in general. An extension might do away with a part of the line, part of it may be charged up to repairs, but in general the extensions are a separate item and they do not appear in any of this item as expenses. They would not appear unless they had in making an extension repaired a certain part of the line.

Q. Do the amounts paid out for extensions during the period in question appear anywhere on Plaintiff's Exhibit 45?

A. No, sir.

Q. Are you sure of that, not in any of the items embraced on any of those sheets?

A. I have examined the sheet. I do not see that they ap-
1064 pear anywhere on it.

Q. You testified, as I recall, before the Public Service Commission of West Virginia in September, 1919, that since the dissolution of the Standard Oil Company, which I believe was late in 1911, the Eureka Pipe Line Company had spent about $350,000 each year in making extensions to its lines. Do I now understand that that item for the time being covered by Exhibit 45 nowhere appears and is not reflected in or embodied in any of the statements of that exhibit?

A. It is not.

Q. I suppose the reason for that is, that one given in your testimony, that you were required to carry such expenditures as capital investment. Is that true?

A. Yes, sir.

Q. Without asking questions in detail as to each of the items appearing upon Sheet 1 and Sheet 2 of Plaintiff's Exhibit 45, I want to ask you to look at each of those items, and having done so state to the Court whether you can give the basis, the actual basis upon which, whether in percentage or otherwise, those items

are separated and a part charged to the expenses of the gathering lines and a part charged to the expenses of the trunk lines, and I call your attention particularly to the fact that I am asking you whether you yourself know and can give the basis used in reaching these figures?

A. I have known. I do not remember the details of the division.

Q. And that applies, does it, to every single item upon
1065 Sheet 1 and Sheet 2?

A. With the possible exception of Item No. 263 on page 2, and Item No. 213 on Sheet 1, "Depreciation." That was in the main if not entirely a percentage.

Q. Do you know what percentage of depreciation was adopted?

A. I cannot state definitely what it was.

Q. Do you know whether, for instance, in applying that percentage of depreciation to the gathering lines you treated the physical property of those lines as wholly separate and distinct from the trunk lines?

A. Yes, sir.

Q. And in applying this per cent, or whatever per cent you adopted to the trunk lines you treated them as wholly separate and distinct from the gathering lines?

A. Yes, sir.

Q. And you gave no consideration to the fact that the gathering lines were used in the transportation of oil to and putting it into the trunk lines, and that the trunk lines were used for the transporting oil brought to them by the gathering lines?

A. Please repeat the question.

Q. (Repeated by the stenographer.)

A. It was a percentage on physical property.

1066 Q. And nothing else?

A. Nothing else.

Q. I wish to request that when you furnish the information heretofore called for, which I hope can be furnished counsel for the defendants, if possible, a sufficient length of time before the next hearing to enable counsel to examine and consider it.—that you furnish the following information which I will designate as Towl Request No. 8, as to items on Plaintiff's Exhibit No. 45, numbered 202, 203, 262, 253, 222, and 272, and with reference to these items so far as applicable to each:

A. Cost of new lines or extensions included in the appropriate item numbered above.

B. Cost of replacing old lines with new.

C. Amount of general salaries or expenses included.

And as to the items on Plaintiff's Exhibit No. 45, which I will designate as Towl Request No. 9, I will request with reference to the items on Plaintiff's Exhibit 45, which are numbered respectively 205, 255, 223 and 273, that the following information so far as applicable to each be given:

A. Cost of new pumps, boilers, stations and equipment.

B. Cost of replacing old pumps, boilers, stations, and equipment with new.

C. Amount of general salaries or expenses which are included.

1067 And as Towl, Request No. 10——

Mr. Crawford: You mean the ones upon which you wish information, only such items as are included in those items there?

Mr. Mathews: Included in that exhibit.

Mr. Crawford: And if they are not included in the items, then your request does not attach to them?

Mr. Mathews: The answer that there is not any would be an answer. I mean to say, if any of the information called for is not embodied in the numbered item, we do not care for it. We are limiting ourselves strictly to the basis of Plaintiff's Exhibit 45.

Q. And as Towl Request No. 10 applicable to Nos. 206, 256, 224 and 274 of Plaintiff's Exhibit 45, the following information:

A. Cost of new oil tanks and equipment.

B. Cost of replacing old tanks and equipment with new.

C. Amount of general salaries or expenses which are included.

Mr. Crawford: And you again limit those requests to items which in fact form a part, if such there were, of the amounts stated on that exhibit?

Mr. Mathews: Yes, that is correct.

Q. And as Towl Request No. 11, as applicable to Plaintiff's Exhibit 45, Items Nos. 208, 258, 226 and 276, the following information:

1068 A. Cost of new telephone and telegraph lines.

B. Cost of replacing telephone and telephone lines.

C. Amount of general salaries and expenses which are included.

And as Towl Request No. 12, applicable to Plaintiff's Exhibit 45, Nos. 204 and 254, the following information, namely, cost of new buildings or additions.

And as Towl Request No. 13, applicable to Plaintiff's Exhibit No. 45, Items Nos. 213 and 263, the following information:

A. How are the amounts of depreciation determined.

B. Give amounts of depreciation charged during each of the preceding five years.

Towl Request No. 14, applicable to Plaintiff's Exhibit No. 45, Item No. 214, the following information, namely, give amount of retirement for each of the five years preceding the year in question.

As Towl Request No. 15, please furnish information or a statement showing the amount expended by the Eureka Pipe Line Company for the year ending June 30, 1919, for capital investment, together with the items of such capital investment and the amounts of each item respectively.

This request is made to apply to the investments therein mentioned, which do not appear in Plaintiff's Exhibit 45.

May I ask whether you will prior to the next hearing, and
1069 as soon as you conveniently can, give us the information called for in the foregoing requests to be prepared and furnished to counsel?

A. I will go to work at it as soon as possible. I don't know how long it will take.

Recess.

1070 Afternoon Session.

Mr. Mathews: I would also request and call for under the head of request Towl No. 16 to be furnished in connection with the information already requested, that you give the total amount if there be any of the general office of general officers salaries which are not covered by the items on Plaintiff's Exhibit No. 45, being item No. 231 on sheet 1, and No. 281 of sheet 2.

The Witness: Yes, sir.

Mr. Crawford: Mr. Towl, by consent by counsel for the State, is temporarily withdrawn from the stand in order to take the evidence of two witnesses whose depositions are expected to be short, and who will have to leave the State.

Mr. Mathews: That is consented to.

1071 CHAUNCEY B. WARE, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Crawford:

Q. Mr. Ware, where do you live?
A. Montclair, New Jersey.
Q. What company are you connected with?
A. The Carter Oil Company.
Q. What is your position in that company?
A. Treasurer.
Q. What is the business of that company?
A. Producing oil, gas and gasolene.
Q. Does it produce oil in part within the State of West Virginia?
A. It does.
Q. And did it do so during the twelve months ending June 30th, 1919?
A. Yes, sir.
Q. Did it during those twelve months handle any oil except that of its own production? Did it buy any credit balances?
A. No.
Q. To what pipe line company was the oil produced by the Carter Oil Company during that period delivered?
A. To what pipe line company?
Q. Yes.

1072 A. In West Virginia?

Q. Yes.

A. To the Eureka Pipe Line Company.

Q. And upon its delivery your company received credit on the books of the Eureka in the form of what is commonly called credit balances?

A. Yes, sir.

Q. And from time to time did you make tenders of shipments against these credit balances?

A. Yes, sir.

Q. Generally speaking how long after you received a credit balance did you tender the amount of it for shipment?

A. Immediately on the receipt of a credit balance, in fact about every week we sold what stood to our credit at that time.

Q. You say you sold. I haven't asked you about selling it, I have asked you about tendering it for shipment?

A. Yes, we tender to the Eureka Pipe Line Company the oil that stood in our balance at the time of the tender.

Q. And you did that weekly?

A. Yes, sir.

Q. From what place was that tendered for shipment, from what place in West Virginia?

A. Morgantown.

Q. Can you state the total amount of the tenders of ship-
1073 ment that you made during those twelve months?

A. Yes, sir, 389,000 barrels.

Q. For what destination or destinations was that oil tendered?

A. To Bayonne, New Jersey, and Clairmont, New Jersey.

Q. When you first delivered that oil to the Eureka Pipe Line Company and received a credit balance or received a credit on its books, in the form commonly known as credit balances, did you then have any intention or purpose as to where the oil was to go to?

A. Yes, sir.

Mr. Mathews: The foregoing question and answer are objected to and the motion now made to strike out the answer on the ground and for the reason that the question and answer are irrelevant and immaterial and improper. May it be understood that the same objection goes to any questions along this line?

Mr. Crawford: Certainly.

Q. When I ask where the oil was to go to, I mean to say as to how you were going to dispose of your credit balances. Do you make the same answer to that?

A. Yes, sir.

Q. What was such intention or purpose?

A. To tender the oil to the Eureka Pipe Line Company for delivery to the destination of points named in the question.

1074 Q. That is either at Bayonne or Clairmont?

A. Yes, sir.

Q. Prior to the production of oil had you any arrangements with any consignees whereby the oil that you produced was to be forwarded to them?

A. We did.
Q. Did that cover all the oil that you were to produce in West Virginia?
A. Yes, sir.
Q. And was it then your intention or purpose before you produced any of this oil, that is before it came out of the ground, that whatever oil you did produce should be forwarded in pipe lines to those consignees?
A. Yes, sir.
Q. And where were those consignees situated, at the places you named?
A. At the places named.
Q. Was this arrangement in force during the twelve months ending June 30th, 1919?
A. Yes, sir.
Q. And do you intend to testify that the purpose and intention which you have already testified to applied throughout that period?
A. I do.
1075 Q. And applied to all the credit balances against which you made these tenders of shipment that you have testifiied to?
A. Yes, sir.

Mr. Crawford: You may cross-examine.
Mr. Mathews: Counsel for the defendants now move the Court to strike out and exclude all of the questions and all of the answers of this witness asked and given since the last objection was made on the record, on the grounds then stated, and without waiving such objection and pending action of the Court thereon counsel proceeds to cross-examine as follows:

Cross-examination.

By Mr. Mathews:

Q. Mr. Ware, does your company produce oil anywhere else except in the State of West Virginia?
A. It does.
Q. Where?
A. In the States of Ohio, Kentucky, Oklahoma, Kansas and Wyoming.
Q. Did your company sell during the period in question all of the oil which it produced to the same consignees at Bayonne and Clairmont, New Jersey, to whom you sold the oil produced in West Virginia?

Mr. Crawford: I object to any questions or testimony relating to the production by this company outside of the State of
1076 West Virginia as immaterial and irrelevant and not pertinent to the issue, or to the consignees or persons to whom any of this oil was sold and delivered, and I ask that this objection be understood as applying to the entire line of cross-examination without repetition.

Mr. Mathews: It may be so understood.

Q. (The question was repeated by the stenographer).

A. We did not.

Q. During that period did you have the right to sell oil produced by your company to whomsoever the company might elect?

A. Repeat that, please.

Q. (The question was repeated by the stenographer).

A. So far as I know, yes.

Q. Who were the consignees referred to at Bayonne and Clairmont, New Jersey, to whom you have testified you sold oil produced in West Virginia?

A. The Standard Oil Company of New Jersey.

Q. Was the oil produced by your company in West Virginia which was sold to the Standard Oil Company of New Jersey sold to such companies as the result of a voluntary agreement and sale made by your company?

A. Yes, sir.

Q. Could you have sold such oil to any other purchaser during that period if perchance such other purchaser had offered a
1077 higher price?

A. That would have been determined in case such contingency would arise.

Q. Well, do you know if such contingency had arisen, whether your company could have so sold that oil to another?

A. I don't know why it could not.

Q. You don't know why they could not?

A. That was the answer.

Q. And so far as you know there was nothing to have prevented the Carter Oil Company from selling its oil to whoever at that time the Carter Oil Company chose?

A. I don't know of any reason why they could not.

Q. And as to the tenders which you have stated were made on oil produced in West Virginia weekly, I believe you said, the time of making such tenders was entirely a matter for the Carter Oil Company to determine, was it not?

A. Yes, sir.

Q. And it made such tenders as and when its business requirements or engagements rendered it advisable to do so, is that correct?

A. That is correct.

Redirect examination.

By Mr. Crawford:

Q. Did it, however, make these tenders weekly?
1078 A. Yes.

Mr. Crawford: That is all.

(Deposition closed. Signature waived by consent.)

1079 REED D. BEARDSLEY, a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Crawford:

Q. Mr. Beardsley, where do you live?
A. I live in Pittsburgh, Pennsylvania.
Q. You are connected with the Hope Natural Gas Company, are you not?
A. Yes, sir.
Q. And in what capacity?
A. Treasurer.
Q. What is the business of that company?
A. The primary business of the company is the production, transportation and sale of natural gas. They also produce oil and gasolene.
Q. Did it during the twelve months ending June 30th, 1919 produce oil within the State of West Virginia?
A. Yes, sir.
Q. And upon the production of that oil what was done with it? What did your company do with it?
Q. At the first of every week, on Monday——
Q. I am speaking now about the literal oil that did come from the wells?
A. It was delivered into the lines of the Eureka Pipe Line Company for credit balances.
1080 Q. And you received credit on the books of that company?
A. Yes, sir.
Q. In the form commonly known as credit balances, did you not?
A. Yes, sir.
Q. Did you subsequently from time to time make tenders of shipment against those credit balances?
A. The first of every week, yes, sir.
Q. And from what place did you make those tenders of shipment?
A. From Morgantown.
Q. And you made those you say the first of every week?
A. Yes, sir.
Q. In what amounts?
A. It was generally from 4,000 to 8,000 barrels a week, generally 5,000 or 6,000 barrels.
Q. What proportion, I mean to say in your credit balances if there was any proportion, would you include in the tender every week?
A. We tendered the number of whole thousands of barrels we had, and the small amounts over were left to the next week.
Q. Can you state what the total amount of the tenders of shipments which you made to the Eureka Pipe Line Company during the twelve months ending June 30th, 1919 was?
1081 A. 293,000 barrels.
Q. When you first delivered oil that you produced during those twelve months to the Eureka Pipe Line Company did you have

any purpose or intention as to the destination which the oils was to go to?

A. The tenders specified——

Mr. Mathews: The foregoing question and the answer thereto is objected to on the ground that the question calls for improper, immaterial and irrelevant testimony not pertinent to the issues in this case.

Q. The question was, when you first delivered oil that you produced during those twelve months to the Eureka Pipe Line Company did you have any purpose or intention as to the destination which the oil was to go to? I am not now asking you about tenders. I am asking you to notice the language of my question.

Mr. Mathews: May it be understood that the foregoing objection to this question and any answer may apply to any other questions and answers along this line without in each case repeating it?

Mr. Crawford: Certainly. I ask that the question be repeated.

Q. (The question was repeated by the stenographer.)

A. It was our purpose to deliver it to the Eureka Pipe Line Company, to be tendered and sold to consignees in New Jersey.

1082 Q. You say "to be tendered to consignees." Tenders were made to the Eureka Pipe Line Company, were they not?

A. Yes, sir.

Q. I neglected to ask you when you stated that 293,000 barrels I think you said, or tenders amounting to 293,000 barrels were made by your company during the twelve months in question,—I neglected to ask you for what destination those tenders were made?

A. For Clairmont,—points in New Jersey, namely, Clairmont and Bayonne.

Q. And you now say, do you, that even before you made the tenders and when you first delivered to the Eureka Pipe Line Company oil on which you received the credit balances in question, that it was the purpose and intention of your company that that oil should be forwarded through pipe lines to New Jersey points?

A. Yes, sir.

Mr. Crawford: You may cross examine.

Cross-examination.

By Mr. Mathews:

Q. Mr. Beardsley, does your company produce oil elsewhere than in the State of West Virginia?

A. No, sir.

Q. Who were the consignees to whom you have testified
1083 your company sold oil during the period in question at Clairmont and Bayonne, New Jersey?

A. The Standard Oil Company of New Jersey.

Q. During the period in question, namely, the year ending June 30th, 1919, your company had the right at any time to sell the oil

standing to its credit in the Eureka Pipe Line Company to any consignee it might elect anywhere, did it not?

A. I would think so.

Q. And at such price as it could obtain?

A. Yes, sir.

Q. And it had the right to start to sell its oil to the Standard Oil Company at Clairmont and Bayonne——

A. How is that again?

Q. It had the right to start to sell the oil produced to the Standard Oil Company at Clairmont and Bayonne, and sell it to that company for a period and then change its mind and thereafter sell oil to any other consignee anywhere it might desire, did it not?

A. I would think so, in my opinion, yes.

Q. And it had the right during the whole of that period to change its mind, if I may use such an expression, and change its consignees when and as often as it saw fit, did it not?

A. I would think so.

Q. And if during that period some purchaser of crude oil
1084 other than the Standard Oil Company of New Jersey had offered your company a materially higher price for this oil production, have you any doubt that your company would have sold to such other prospective purchaser?

A. Not if the conditions were all right, if the party wishing to make the purchase was in good standing financially and everything, and there was no risk connected with it, I would not see any objection to it.

Q. And you would not doubt that assuming the conditions that you suggested, that your company would have sold its oil, have you?

A. I can only give an opinion. That is up to the board of management. I could only give an opinion.

Q. I don't care for your opinion. I do not say that discourteously?

A. I understand.

Q. I don't want anything except what you know or what you have reason to know, that is what I mean. As to the tenders which you have stated you made to the Eureka Pipe Line Company at Morgantown on the first of every week, you made such tenders at these different times mentioned by you because to do so suited the then convenience and business arrangements of your company, did you not?

A. Yes, as far as I know. Of course there was during this
1085 particular period,—there was a great deal of influence brought to bear from patriotic sources to keep all the oil going possible, and whether they had anything to do with the cause of that particular arrangement I don't know, but it was a financial item that was satisfactory to the management to have the oil sold as fast as possible.

Q. And if the reverse of that had been true, as for instance if the patriotic duty which you have mentioned ceased to have application and your company had reason to believe that the price of oil in the future was going to materially advance, it could and probably would have not made its tenders so frequently but would have held the oil?

A. That is true——

Mr. Crawford (interrupting): I object to the question as speculative, being a hypothesis not based upon any evidence in the case, and immaterial and irrelevant and improper.

A. That is true as far as I know.

Q. You know of nothing which could have prevented the company from changing its tenders from being weekly to carrying for any time your company saw fit, did you?

Mr. Crawford: I make the same objection.

A. I know of nothing.

Q. Did you state that these tenders were made at Morgantown or not?

1086 A. They were made—tenders are made for the oil to be delivered at Morgantown.

Q. Where were the tenders actually made, at what point?

A. New York.

Q. Sir?

A. New York.

Q. Where does your company produce oil in West Virginia?

A. Dodridge County; Wood County, Ritchie County; Tyler County; Harrison County; Calhoun County; Lewis County. I don't recall any others in the field.

Q. I may have confused you. I thought the vernacular that you use is more nearly my own than most of that that has been used during this hearing, but I want to ask when you say that a tender was made at New York to be delivered at Morgantown, if you did not mean that it was tendered to the Eureka Pipe Line Company to ship from Morgantown?

A. That is what I mean, yes, sir.

(Deposition closed. Signature waived by consent.)

1087 FORREST M. TOWL resumed the stand.

Mr. Mathews: Counsel for the defendants at this point move the Court to strike out and exclude Plaintiff's Exhibit 45 in its entirety upon the ground and for the reason that such exhibit, neither standing by itself nor in connection with any testimony up to this point introduced into the case, shows any basis, reason or explanation as to the items thereon shown under all heads including "Maintenance Expense," "Transportation Expense," and "General Expenses," upon which the expenses of the Eureka Pipe Line Company during the year in question have been separated and allocated and apportioned as between the gathering lines of the Eureka Pipe Line Company and the trunk lines of said company; and that they show no basis, principle or method by which the net revenues, taxes, operating and other income provides a "profit, loss and suspense account" or any of them may be allocated or apportioned as between the gathering lines and the trunk lines of said Eureka Pipe Line Company, and because said exhibit taken as a whole and in its several parts and in connection with the evidence heretofore offered on the part of the plaintiff

does not constitute proper, relevant or material testimony bearing upon any issue in this case.

Cross-examination.

Continued by Mr. Mathews:

Q. Mr. Towl, referring to your testimony before the Public Service Commission of the State of West Virginia on September
1088 9, 1919, I wish to ask you if it was not testified by you and does not appear therefrom,—and I have in mind particularly page 21 of such testimony,—that since the year 1912 the cost of material and labor used and employed by your company has fluctuated with something like regularity, sometimes the price of labor being lower and then as a general thing when the price of labor would go down for six months or a year, that the following year it would go up again a little bit, and that while there has been a gradual upward tendency during such period, that such cost of labor and material has fluctuated up and down since the year 1912 with some regularity?

Mr. Crawford: Don't you think, Mr. Mathews, that you ought to give the whole of his testimony? That gives only a part of his statement.

Mr. Mathews: For the moment I simply want to ask that concrete question, and of course I am not only willing but I desire the witness to read any part or the whole of the evidence referred to before answering.

Mr. Crawford: I ask that the question be repeated.

Q. (The stenographer repeated the question.)

Mr. Crawford: I call the attention of counsel to the fact that he did not so testify, as to the time since 1912, but as to the time prior to 1912, and the next question relates to what followed, and what you ask I think would not be true as to the figures that he
1089 gave.

Mr. Mathews: That was a construction I placed upon the figures that he gave.

Mr. Crawford: He did testify that way. He said until about 1912. That is what he stated.

Q. I will add to the question, in the above question, instead of saying since 1912, I should have said until about 1912.

A. I testified that it had been irregular, not that it had been with regularity; otherwise about as you stated.

Q. Mr. Towl, the expenses of your company and also its gross and net income depend upon the amount of oil handled during each year, does it not?

A. What is the question, please?

Q. (The question was repeated by the stenographer.)

A. The expenses depend on the amount of work we do, but not in proportion to the amount of oil we handled. The income on a

certain tariff depends in proportion to the amount of oil we handle on that tariff.

Q. The revenues or income of your company are entirely dependent and regulated by the amount of oil which your company handles during any year, is that not true?

A. What is the question again, please?

Q. (The question was repeated by the stenographer.)

A. The tariff revenues are dependent entirely upon the
1090 amount of traffic.

Q. And are not the expenses affected at all by your handling a larger quantity of oil than a smaller quantity?

A. Certain expenses increase in handling a larger amount of oil.

Q. I will ask you as a general thing, and I am going to ask you for once to answer by yes or no, are not the expenses of your company during any given year affected to some extent by the amount of oil that your company handles during such year?

A. Affected to some extent.

Q. You have still declined to give me the pleasure of hearing either a yes or no; but the more oil you handle during any given year the greater to some extent are your expenses necessarily, is that not true?

A. Not in all cases necessarily.

Q. Do you mean to say that it is possible that during any given year your expenses will be less the less oil you handle?

A. The expenses for handling a certain amount of oil in some places in our system would be practically the same if we were handling the amount we now handle, as if we were handling two or three times that amount.

Q. Take the gathering lines of your company in West Virginia and keep them in mind, and as applied to them do you want
1091 to be understood as saying that it is possible that in any given year the less oil you gather and handle through those lines, the less your expenses would be? I ask you if that is possible?

A. Yes, sir.

Q. Then does the amount of oil you handle in every case or only occasionally tend to increase the revenues of the company?

A. The amount of oil we handle on tariff tends to increase the amount we receive, provided the amount we handle is more; if it is less it tends to decrease it.

Q. And the increased amount of oil which you handle depends upon two things, is that not true? First, the extension or further development of the operating pools, and second, upon the discovery and development of new pools, is that not true?

A. As far as the gathering is concerned, it depends to a large extent on those elements.

Q. And during the years since 1912 when pools of oil in West Virginia have been more fully developed than in the year preceding, your revenues from handling such oil have increased?

A. Providing such oil has been run through our lines. There are a number of competitors down there that run their oil through other lines. They pick out the cream of the whole State.

Q. And you mean that you get the milk only?

1092 A. We have to take what is left.

Q. Then when production in an old field commences to go down, in which field your company is handling the oil, unless new pools are discovered which your company handles the oil from, the revenues of your company go down, is that correct?

A. Yes, sir.

Q. And if and when new pools are discovered and the oil therefrom is handled by your company, the revenues go up?

A. Yes, sir, if we handle more oil.

Q. And the more fully and completely such pools either new or old are developed, the more oil is produced, the more the revenue of your company goes up?

A. The more oil that is produced and handled by our line, the more the revenue goes up.

Q. And the fluctuation in the gross revenues of your company is accounted for to a very large extent by the gradual exhaustion of old pools, the further development of old pools, and the discovery and development of new pools, from all of which the oil is handled by your company, is that correct?

A. What is the question, please?

Q. (The question was repeated by the stenographer.)

In other words the amount of production handled by your company, which production depends upon exhaustion, development and discovery, is a thing that affects the revenues of the

1093 Eureka Pipe Line Company, is it not?

A. Yes, sir.

Mr. Crawford: You mean the tariff revenues of course?

Q. Are there any other revenues from transportation of oil except the tariff revenues?

A. No other revenues from transportation of oil except tariff revenues and possibly some inter-carrier arrangements which might be considered as operating revenues.

Q. Those inter-carrier arrangements are all based upon either your company transporting or storing oil, are they not?

A. Yes, sir, the company transporting oil, or our company having the oil for a certain time in their custody untendered.

Q. There has been a great deal said at this hearing about "so-called storage charges," and every witness for the plaintiff who is connected with the Eureka Pipe Line Company has carefully used that phrase and expression, whenever "storage charges" were referred to. May I ask when and under whose direction the officers of the company and the employees who have testified first adopted that phraseology?

A. What is the question, please?

Q. (The question was repeated by the stenographer.)

A. In reference to the charges which are called "storage charges," we were advised by counsel that under the laws of the State of West Virginia, taken as a whole, that we were warranted

1094 in making that charge and calling it "for storage." There is no actual storage of the oil. The oil is continually moving through the lines.

Mr. Mathews: Please read the witness my question.

Q. (The question was again repeated by the stenographer.)
May I ask when and under whose direction the officers of the company and its employees who have testified first adopted that phraseology the "so-called storage charges"?

A. It has been termed "so-called storage charges" even in the past, where we have understood from our counsel that the laws of the State of West Virginia properly construed in their entirety, warranted us in making a charge which was not an actual storage charge.

Q. Do you decline or are you unable to answer the question that has been three times propounded to you?

A. We have acted under advice of counsel in this case, in calling it the "so-called storage charge."

Q. And never before, did you?

A. Yes, sir.

Q. When?

A. At various times when we have discussed the matter. It has not been considered by us as a charge for storing oil.

Q. Let us see. It has been testified in this case, has it not, by Mr. Swisher that this charge is entered upon the books of
1095 your company as "storage," is not that true?

A. It is entered on our books as storage.

Q. And not as "so-called storage?"

A. Not as "so-called storage."

Q. Isn't it also true that on the first of every month your company furnishes all of its customers who have credit balances in your lines with a statement that if those credit balances have been in those lines for a sufficient length of time, under your rules to be charged with storage, that there appears upon every such statement the words "less storage?"

Mr. Crawford: I object to the question on the ground that it does not state the testimony. There is no testimony to the effect that credit balances are carried in the lines of the company in the form of one entry from another. It is impossible that there should be.

Mr. Mathews: I am not quibbling over words. I mean oil in the lines then. Substitute oil for credit balances.

Q. Whenever a customer has oil in your lines long enough under your rules to become subject to a storage charge, does not your company render such owner of oil every month a statement showing the balance to his credit followed by the words "less storage," with an amount opposite less, which is deducted from the total above?

Mr. Crawford: I object to the question because the testi-
1096 mony shows that the customers do not have oil in the lines after it is delivered to the company and entered as a credit balance.

Q. Answer the question?

A. You ask, if I understand you aright, if a statement is not made to each producer having a storage balance, showing that he has delivered a certain amount of oil to our custody?

Mr. Crawford: You do not mean a storage balance, do you?
The Witness: A credit balance.
Mr. Crawford: You said "a storage balance"?
The Witness: I meant a credit balance.

Q. Go ahead?
A. Was that what you asked?
Q. No, sir.
A. I fail to understand the question.
Q. Does your company furnish monthly statements to those customers?
A. I cannot say. I believe not.
Q. You believe not?
A. I believe not.
Q. Who could say?
A. When a man asks for a statement we give it to him.
Q. Don't you mail it to him anyway?
A. We do not.

Q. Does your company send monthly statements to its
1097 customers where such customers have requested your company to do so?

A. We send such statements wherever requested.
Q. And when you send such statements and the customers to whom they are sent have delivered oil into your lines a sufficient length of time back to render it subject to a "storage charge" or "so-called storage charge" under the rules of your company, I want to ask whether such statement does not have something on it to show that fact?
A. When the statement——
Q. Please answer that by yes or no, Mr. Towl, and then say anything in the world you want to.
A. I don't know that I ever saw one.
Q. You have been President of the Eureka Pipe Line Company since November, 1911, and are unable to state whether you ever saw a monthly statement such as your company furnishes customers when requested, is that correct?
A. I know that statements are sent out. I don't know that I ever saw the actual statement that was sent out.
Q. Do you know what is on the statements?
A. I cannot tell you. Probably the same that has been on it for years.
Q. What officer of your company does know what is put on those statements?

A. The party who sends them out.
1098 Q. Who is that? I don't know who the employees of your company are?

A. I believe the facts would be given by Mr. P. W. Swisher.
Q. Who has already testified here?
A. No, sir.
Q. This is a different Mr. Swisher?
A. Yes, sir.

Q. What office does Mr. P. W. Swisher hold?

A. He looks after the runs, the run ledgers, and he would have that information.

Q. Let us get back to it again, because I want this information and I am entitled to it and I am going to continue to try to get it. Please tell the Court just when yourself and the employees of your company who have testified in this case began to use the expression "so-called storage charge," every time they referred to the charge which is carried on your books as "storage charge"? Just when did they commence to do that?

A. I cannot tell you just when. On advice of counsel that has been used in this case.

Q. Was it at or about or since the time of the institution of this suit in which you are now testifying?

A. It was used before the suit even.

Q. Sir?

A. It was used before the suit even.

1099 Q. Do you know when this suit was brought?

A. Yes, sir.

Q. When?

A. Approximately.

Q. When was the question?

A. Sometime during the latter part of this year.

Q. Sometime during the latter part of this year, 1919?

A. Yes, sir.

Q. Mr. Towl, can you give any figures as to the average distance which the Eureka Pipe Line Company transports in West Virginia oil produced in West Virginia?

A. No, sir, I cannot.

Q. Do you know whether any officer of your company can do so?

A. I do not believe any officer or employee of the company can do so.

Q. Mr. Towl, please refer to page 13 of your testimony before the Public Service Commission; note the runs of oil produced in West Virginia and handled by the Eureka Pipe Line Company during each of the years 1899 to 1918 inclusive, and state whether or not it does not appear from that table that the oil produced in West Virginia and handled through your company has several times decreased from the preceding year, and then later increased very materially, still later decreased and again increased, is that

1100 correct?

A. It shows it increased, and it decreased and later increased and decreased and increased, and then decreased.

Q. And that fact so appearing, where it shows on these runs after having decreased in ensuing years, or a year, increased, was due to the fact either that pools of oil in West Virginia were being rapidly developed at that time or else that new pools had been discovered and were being opened up, is that true?

A. That was one of the principal factors. The other factor that

will change that is the oil handled by competitors that was formerly tributary to our lines. I could not tell what effect that had on it.

Q. Take for instance 1911, in that year in round numbers the runs handled exceeded 9,000,000 barrels and in the following year, 1912, such runs in round numbers approximated 11,500,000 barrels. Was that increase due to the opening up of the socalled Blue Creek field?

A. Yes, sir, principally.

Q. Take 1909, where runs appeared to be nearly 10,000,000 barrels, followed in 1910 by runs exceeding 11,000,000 barrels. Do you know what caused that increase?

A. I am not sure whether that was the Shinnston pool that gave us that, or whether the Shinnston pool was prior to that, and
1101 that it was not closely associated with the Eureka Pipe Line Company at that time. I cannot say just what the result there might have been at that time.

Q. So far as you are aware, since you have been President of the Eureka Pipe Line Company has your company ever occupied a so-called field and afterwards been forced to withdraw from it, or has actually withdrawn from it?

A. Yes, sir.

Q. Where was that, Mr. Towl?

A. Cabin Creek field.

Q. In what year was that?

A. I cannot say definitely. Some of the pipe was in the lines we had, and I believe was sold in that year about which we were speaking, the year ending June 30th, 1919.

Q. My question was as I now see ambiguous in that I used a conjunctive, "to force or withdraw from," or "had withdrawn." Which did you mean as to the Cabin Creek field, did you withdraw voluntarily or were you forced to withdraw?

Mr. Crawford: What do you mean by "forced" Mr. Mathews?

Mr. Mathews: I am somewhat afraid that it is an improper expression to start with.

Mr. Crawford: What do you mean by it? Do you mean by physical conditions? Or "force majeure" as the French call it or some outside power or pressure, or by competitors?

1102 Mr. Mathews: I don't know exactly. It is synonymous with an expression used by this witness, neither of which I exactly understand. He said somewhere back in his testimony "had to get out of" or "had to drop."

Q. I want to find out now the compelling cause if there was one as to your withdrawal from the Cabin Creek field?

A. We spent quite a large amount of money in piping up that field at Cabin Creek on the statement of the producers who were operating there that they would run their oil through our lines, and when we got our lines completed they declined to run their oils through our lines and made other arrangements for their oil, so there was practically no business for us to do.

Q. Your company failed simply to secure the business?
A. Yes.
Q. That is the situation?
A. Yes.
Q. Mr. Towl, going back to your testimony for a moment, you said I believe that as to evaporation, losses commenced to result from evaporation in the producer's tank at the time the company starts to take oil into its gathering lines from the producer's tank. That is correct, is it not?
A. Our loss starts when the tank is connected on to our lines, and there is some loss which goes up through the top of the producer's tank, before the oil gets into our lines.
1103 Q. I understood you to say that before the oil was put into your lines, it was gauged in the tank, and that then the tank was drawn off and the oil went into your lines, and that during that process, namely, after it had been gauged and before you commenced to draw it off, that your company suffered its first loss from evaporation, is that correct?
A. Yes, sir, we suffer our first loss at that time.
Q. Then you did not mean to be understood as saying that the Eureka Pipe Line Company suffers any loss from evaporation prior to the time the tank is first gauged and then drawn off, do you?
A. We did not suffer any loss prior to the time when the tank is first gauged. Between the time when the first gauge is taken and the second gauge is taken the loss falls on us.
Q. Assuming a 10,000 barrel tank gauged and ready to be emptied, how long does it take the Eureka Pipe Line Company to draw it out?
A. It would depend on the lines and the location of them.
Q. Well, they are your lines, what is the usual number of pipes that you use to draw off oil from purchasers' tanks?
A. The usual number is one.
1104 Q. What size?
A. The usual size is two inches.
Q. Well, assume that?
A. It is more usually that than any other size.
Q. Assume then one pipe two inches in diameter, a 10,000 barrel tank half full, 5,000 barrels, how long normally and ordinarily would it require that tank to be emptied?
A. You will have to give me more data than that to figure it on.
Q. What else would be necessary?
A. You say "normally". I cannot tell you what normally is. The amount that you can get out of the tank depends on the length of the pipe and the location of the pipe, whether there is any other line going into the line that goes out of the tank, and a great many other factors.

Mr. Crawford: Mr. Mathews, won't you assume a size of tank which is within the realms of possibility and not a dream tank? A producer's tank is about 250 barrels. That, I understand, is the ordinary producer's tank.

Mr. Mathews: I will refer to that.

Q. Assume a 250 barrel wooden producer's tank full of oil, that your company has connected with that tank one pipe two inches in diameter, and that all other conditions are average conditions with nothing extraordinary about them, how long would it
1105 take the Eureka Company to empty that tank?

A. Will you repeat the question, please?

Q. (Repeated by the stenographer.)

A. Several hours.

Q. Several hours?

A. Yes, several hours.

Q. Can you give us any better idea than "several hours," Mr. Towl? Do you mean two or three or seven or eight, or ten or twelve?

A. Oh, I cannot tell unless I know what particular tank you are talking about, what kind of oil is in it, and what other oil is going into the lines. Several hours.

Q. Let us assume Pennsylvania grade oil, and no other oil is going into the lines at that point?

A. I don't know what particular tank you are talking about. I should think I could make a fairly close estimate as an engineer if I know all the factors that enter into it.

Q. I don't want your estimate as an engineer. I want it from your personal experience with pipe lines and as President of the Eureka Pine Line Company, with an experience extending over many, many years, during all of which time you have been, I assume, bound to be familiar with the process of emptying, with the very simple process of emptying a wooden tank with oil contents, and I don't want to add to my question in particular any tank. I just want you to assume it is an average wooden customer's
1106 tank, and that all the conditions surrounding it are simply normal average conditions. Now, with that understanding can you give me any closer, or can you come any closer to giving a length of time that would be required to empty it than your answer "several hours"?

A. No, sir.

Q. Is such a tank as we have been discussing, when it is run into gathering lines in your company, ordinarily drained dry?

A. No, sir.

Q. Can you state about what quantity of oil in barrels or feet or inches is usually left in it?

A. Usually several inches. Our connection is usually made a few inches above the bottom of the tank.

Q. What do you mean by "a few inches"?

A. Six or three or four, or five or eight, or eight or ten, possibly. It depends on the tank and in the field in which we move it.

Q. And then if it is drawn out, of course the oil which is below that aperture is left in the tank, isn't it?

A. Yes, sir.

Q. And after it is drawn out the tank is again gauged and your company has become responsible for the amount of oil shown by the

difference between the first gauge and the last gauge, is that correct?

1107 A. Yes, sir, less the two per cent taken care of by the gauge of the tank.

Q. That is automatically taken care of as the tank is emptied, isn't it?

A. Yes, sir.

Q. I understood you to say that no record of this two per cent which is deducted and which is automatically taken care of, as you have indicated, ever appears upon the books of the Eureka Pipe Line Company. Did I understand you correctly?

A. I cannot say that it does not in some way appear on some of our books, but it is taken care of at that point. We may have some books where we try to check up with the runs from the wells, and we may enter that there was so much oil run in this line, and two per cent of that would be a certain amount.

Q. The two per cent is just as much physical oil as the other ninety-eight per cent, isn't it, when it goes into your lines, and worth just as much?

A. It don't all go into our lines, and it does not all appear at the first tank of our system after it leaves the producer's tank.

1108 Q. I don't care what becomes of it. The two per cent is real oil, isn't it? And worth just as much as any other oil of the same grade?

A. It was at the time it stood in the producer's tank, of the same nature as the other material that stood in the producer's tank.

Q. So much of it as entered your lines was of exactly the same nature, too, wasn't it?

A. Except there was loss in the producer's tanks.

Q. That did not enter your lines, did it?

A. No, sir.

Q. I said so much of it as entered your lines?

A. The nature of it would be changed slightly by the loss.

Q. It would not be changed from that of the rest of the oil that entered your lines, would it?

A. No, it would be the same nature as the rest. The oil had not entered our lines.

Q. And just as much real physical oil and worth just as much money barrel for barrel as the rest of the oil, wasn't it?

A. Yes, sir.

Q. It is in no sense a myth, it is real physical oil?

A. It is real physical oil that goes into the lines.

Q. And worth at the present time $4.50 a barrel?

1109 A. Yes, sir.

Q. The oil for which you charged the Cumberland Pipe Line Company a storage charge or "so-called storage charge", if you prefer, exceeding $5,000 during the year in question, was also real physical oil, was it not?

A. What is the question?

Q. (The question was repeated by the stenographer.)

Mr. Crawford: I object to that as directly contrary to the evi-

dence, which was that it was a charge made upon credit balances in favor of the Cumberland Pipe Line Company.

Mr. Mathews: The witness may answer that according to the facts.

A. The charge was made on the credit balance of the Cumberland Pipe Line Company. We received from the Cumberland Pipe Line Company a certain amount of physical oil.

Q. And that oil took up a certain amount of physical space both in the Cumberland Pipe Line Company's lines and in yours, did it not?

A. When the oil was in the Cumberland Pipe Line Company's lines it took up space in the Cumberland's lines, and if it was in ours it took up space in ours.

Q. And it came into your lines because, as you have stated, "producers were not placing it in movement", to the extent greater than usual, and it remained untendered for a certain length of time, and then the Eureka Pipe Line Company made a charge against
1110 the Cumberland Pipe Line Company which was paid exceeding $5,000, based upon a rate of that oil so delivered, of one one-hundredths of one cent per barrel per day? Am I correct?

Mr. Crawford: I object to that because the testimony is that it was based upon credit balances and not upon the oil.

A. It was based upon the credit balance in the custody of our lines at the rate of one one-hundredths of a cent a barrel per day.

Q. And the credit balance which is an intangible thing, rested upon absolutely nothing except the fact that the Cumberland Pipe Line Company had prior thereto run their physical oil into your lines, is that not correct?

A. And the credit balance was based on the credit of the Eureka Pipe Line Company.

Q. Wasn't it based upon the oil, the physical oil, which was run into your lines by the Cumberland Pipe Line Company?

A. We give the credit to the Cumberland Pipe Line Company,—a credit balance, because our books showed that there was, or had been a certain amount of oil delivered into our lines untendered.

Q. And you would not have given them that credit balance unless that had been the case, would you?

A. We would not have given them a credit balance unless
1111 our books showed there was a credit due to them.

Q. And there would not have been a credit due to them unless the physical oil had been run into your lines, would there?

A. There would not have been a credit due them unless we had received oil from them.

Q. The physical oil?

A. Yes, sir, the physical oil from them.

Q. And you made that charge one day after the receipt untendered of the physical oil, is that true?

A. It was made on the credit balances at the rate of one one-hundredths of a cent per barrel.

Q. I ask you if you did not make that charge, commencing one day after the receipt of the physical oil untendered?

A. The credit would appear on the receipt of a certain amount of physical oil, unless some other factor had changed the credit. We might receive oil and a tender might be issued at practically the same time.

Q. I am not asking you a hypothetical question. I am asking you if you did not testify this morning as a fact, or yesterday, that you made this charge against the Cumberland Pipe Line Company, commencing one day after the receipt of the physical oil? Am I right or wrong about it?

A. We make them up every day after our books showed
1112 a credit balance, one one-hundredths of a cent charge per barrel per day.

Q. When did your books, or when do your books first show the credit balance with reference to the delivery of the physical oil, at the same time?

A. We are continually receiving oil and the credit balance is struck at the time of our daily report, which is at seven o'clock each morning. We check up and see how much we have received.

Q. How much oil you have actually received the day before?

A. How much oil we have actually received the day before.

Q. And then in the case of this charge against the Cumberland Pipe Line Company, you made the so-called storage charge, or whatever you choose to call it of one one-hundredths of one cent per barrel per day, and that commenced to run against the Cumberland Pipe Line Company the next day? I am not asking you about the custom of your company. I am asking you the fact with reference to this particular shipment?

A. The credit balance has nothing to do with any particular oil in the lines of the Eureka Pipe Line Company.

Q. I did not say it did. I ask you as to a fact, as to which you have already testified, and that was simply this: You have stated that after the oil was delivered by the Cumberland Pipe Line Company, that you checked up the amount received, I believe
1113 at seven o'clock the next morning. Was that right so far?

A. Yes, sir.

Q. And I ask you then, on the following day, didn't you, or for the following day and every day that that oil remained untendered, didn't you charge the Cumberland Pipe Line Company the rate stated?

A. We credit the Cumberland Pipe Line Company each day with the amount of oil that we received from them. We debit them with the amount that they tender us, and if the books show that there is an amount of untendered oil in our custody we charge them for that at the rate of one one-hundredths of a cent per day per barrel.

Q. For the day following its receipt? That is right, isn't it?

A. Will you read the question again?

Q. (Repeated by the stenographer.)

A. That is correct.

Q. That is right, isn't it?

A. I said my answer is correct. My answer was correct, not necessarily for the day following its receipt.

Q. I am going to get this straight if it takes all winter. Isn't this true, the oil from the Cumberland Pipe Line Company to which we have been referring is placed into the Eureka Company's
1114 lines, is that right?

A. Oil placed in there daily.

Q. I am not talking about oil generally, I am talking about this oil which you charged them $5,000 for, for some period, that oil, physical oil, flowed from the Cumberland Pipe Line Company into the Eureka Pipe Line Company, didn't it?

A. We didn't charge them on the physical oil.

Q. The oil which formed the basis for the credit balances for which you charged them so long as it remained untendered flowed from the Cumberland Pipe Line Company into the Eureka Pipe Line Company, did it not?

A. Oil flowed from the Cumberland Pipe Line Company to the Eureka Pipe Line Company daily.

Q. I am not talking about daily, about oil flowing daily. I have repeatedly explained to you that I am talking solely about the oil which formed the basis for the credit balance for which the evidence shows you charged the Cumberland Pipe Line Company so long as that oil remained untendered. That is certainly plain. I direct your attention solely to that oil forming such a basis for such a credit balance. It flowed actually from the Cumberland Pipe Line Company into your lines, did it not? Please answer by yes or no?

A. Repeat the question, please?

Q. (Repeated by the stenographer.)
Did it?

1115 A. It is one factor that forms part of the credit balance. The credit balance is the difference between the oil we receive and the oil in our custody, which varies daily.

Q. Is that the only answer you desire to make to my last question, which has been restated in one form or another several times? Please answer that by yes or no?

A. Yes.

Q. All right, sir. Now, Mr. Towl, in your testimony before the Public Service Commission of West Virginia, I want to ask you, and I refer to page 35 of your testimony, if before testifying before that Commission you had not had careful investigation made as to the revenues and expenses of your company and certain tables more or less elaborate prepared to form the basis of your testimony?

Mr. Crawford: I ask that that question be repeated.

Q. (Repeated by the stenographer:) Is that true?

A. I had a certain statement prepared before I——

Q. (Interrupting.) It was carefully prepared with a view to your testifying before that Commission, was it not?

A. It was carefully prepared.

Q. And you filed, I believe, Exhibits numbered 1, 2 and 3, and also another table known as Exhibit B?

A. I remember Exhibit B. I cannot say about Exhibits 1, 2 and

3. I don't remember what they were. I remember what
1116 Exhibit B was in a general way.

Q. At any rate your testimony before that Commission was given after the result of a careful investigation of the affairs of your company, was it not?

A. Yes, sir.

Q. I ask you to refer to page 35 and state whether in response to a question propounded to you by Mr. Charles Powell, one of the attorneys for your company who has been present during this hearing, you did not make the following statement:

"A. I have had conferences and communications, I took up the matter in the first place without having made the detailed figures that I have since made. When I made the detailed figures I changed the idea of making an application to make the rate the same as the Buckeye Refining Company."

The Witness: The Buckeye Pipe Line Company is what I testified to.

Q. I am reading it as it is here:

"Just across the Ohio River in the State of Ohio, 35 cents a barrel. I cut that down to 30 cents a barrel, which would be enough to justify us in giving good service to the Oil Producers in the State. The Standard Oil Company of New Jersey wrote me saying, 'Referring to our conversation of this date, we will not oppose the increase in gathering charges on crude oil from 20 cents to
1117 35 cents a barrel.'

"I have no letter from them since that; I have seen one of their officers and told them that I didn't think we were warranted in asking for 35 cents, that we were going to ask for 30 cents, and he said, 'That was very nice.'"

Did you so testify?

A. I did.

Q. On September 9, 1919, under oath, before the Public Service Commission of the State of West Virginia at Charleston?

A. I so testified at that hearing.

Q. You are and were then aware, Mr. Towl, that the Act of the Legislature of West Virginia, the validity of which is attacked in this suit, was approved and in effect unless it should be declared unconstitutional by some court of competent jurisdiction, prior to and at the time you were giving that testimony, were you not?

A. I knew that an act had been passed and certain information with reference to it was being asked for by the State of West Virginia. I had a conference with Mr. Hallanan at that time.

Mr. Mathews: Mr. Crawford, with the understanding that Mr. Towl will be present at the next hearing, I have no fur-
1118 ther questions to ask at this time.

Adjourned to Monday, December 29, 1919, at 10:30 A. M.

1119 THE EUREKA PIPE LINE CO.

VS.

WALKER S. HALLANAN et als.

New York, December 29, 1919.

Adjourned, by agreement, to Monday, January 5, 1920, at 10:30 A. M.

New York, January 5, 1920.

Met pursuant to agreement, at 10:30 a. m.

Present:

For the plaintiff: Frank L. Crawford, Kemble White, Charles Powell.
For the defendants: W. Gordon Mathews.

Owing to the absence of Mr. Avis, for the defendants, adjournment was taken to 2:15 P. M.

2:15 p. m.

GEORGE F. WHITEHEAD, called as a witness on behalf of the plaintiff, was duly sworn.

Owing to the illness of Mr. Avis, the hearing was adjourned to Tuesday, January 6, 1920, at 10 A. M.

1120 THE EUREKA PIPE LINE CO.

VS.

WALKER S. HALLANAN et als.

New York, January 6, 1920.

Met pursuant to adjournment.

Appearances:

For the Plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.
For the defendants: W. Gordon Mathews.

Mr. Crawford: I want to put on the stand Mr. Whitehead. Mr. Whitehead is the chief accountant whom we employed. I want also to recall Mr. Swisher, and then to recall Mr. Towl. Technically Mr. Towl is still on the stand under cross-examination, and I do not claim the right to interrupt the cross-examination except with counsel's consent.
Mr. Mathews: You have it, sir.

Mr. Crawford: But I think that it will very much facilitate getting these statistics into the case in answer to the various re-
1121 quests. I want to say that after Mr. Whitehead has testified and his statistics have been put in, if you want to reserve the right to examine them overnight we have no objection.

Mr. Mathews: I want to call your attention to the fact that counsel for the defendant have not been as yet furnished with any of the information called for at the last hearing, which was to have been obtained and furnished as soon as possible.

Mr. Crawford: I sent you on Friday,—I assume you did not get it,—the answers to a number of your questions.

Mr. Mathews: We left Charleston Saturday afternoon at 6:30, and up to that time we received none of that information, nor any information as to when we would receive it, so of course if it comes in to-day, we will be o' liged to take some time to consider it and analyze it and see what it is.

Mr. Crawford: A very large part of it, as will appear as the evidence develops, required such close examination and the returns were so voluminous that it was not possible to get them in shape to transmit last week. Indeed, a large part of the matter is still in pencil form and there has not yet been time to have it typed. I mailed to counsel for the defendants on Friday afternoon a
1122 brief set of replies to a number of questions he asked. Evidently he did not receive it, for which I am very sorry, but I have done the best that I could considering all the facts and considering also the fact that I was myself indisposed for several days and could not push the thing along as well as I should like to have done.

Mr. Mathews: I understand that some of the information called for in the sixteen different requests made of Mr. Towl would require a rather extensive investigation to furnish, but that was not true of a part of the others contained in those requests. There were a number of them that I have no doubt could have been very readily furnished, for instance as to tank line storage, oil in system at a certain date, and possibly others. I am not criticising counsel or anybody else in the case. I simply want the record to show that when this information comes in to-day it is the first opportunity that any of the counsel for the defendants have had to see it and consider it.

Mr. Crawford: For the sake of regularity we opened the hearing yesterday and called Mr. Whitehead and then recessed to this morning, so that Mr. Whitehead has been sworn already. No questions were asked of him and nothing else was done.

1123 THE EUREKA PIPE LINE CO.

vs.

WALKER S. HALLANAN et als.

New York, January 7, 1920.

Met pursuant to adjournment.

Appearances:

For the plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.

For the defendants: S. B. Avis, W. Gordon Mathews.

Mr. Crawford: I had Mr. Weymouth sworn last night because the Notary could not be here at the opening, but I have decided not to put Mr. Weymouth on the stand for the present, and I am going to call Mr. Swisher and put in some statistics. Before going ahead I want to ask about this letter which came from Mr. Young of the South Penn Oil Company. At the last session before we adjourned for the holidays I produced a letter and somehow or other it got lost in the shuffle and does not appear to have been put upon the minutes.

Do you recollect the fact?

1124 Mr. Avis: I do, yes.

Mr. Crawford: Here is a copy of the letter.

Mr. Avis: The original was left here just as we left that morning.

Mr. White: I understood from the record that this letter was to go in as an answer to the question.

Mr. Avis: It was to be supplied.

Mr. White: He was merely to furnish it in a letter and the reporter was to insert it in the proper place.

Mr. Crawford: I will ask the stenographer to insert the letter in the proper place in Mr. Young's testimony. A number of requests were made of Mr. Swisher, and we found in working them out that it was almost impossible to keep each one of them separate, and it was comparatively easy to prepare certain tables which answered the requests in the aggregate, and that is the form on which our information on those points is now represented. If it later appears that these tables do not cover fully all the requests and that is pointed out to us by counsel for the State, we will do our best to supply any gaps that may remain.

1125 VERNON S. SWISHER recalled on behalf of plaintiff.

Direct examination.

By Mr. Crawford:

Q. Mr. Swisher, have you, since you were last on the stand and in response to requests made by counsel for the State of West Vir-

ginia prepared certain tables giving information in regard to the operation of the company?

A. Yes, sir.

Q. One of the requests which appears at pages 689 and 690 of the minutes was, as I have it in my notes, for the amount involved of the different grades of oil received by the company under the one per cent. allowance or deduction made under the I. C. C tariff upon which through shipments moved. This was to cover first the twelve months from July 1st, 1918, to June 30th, 1919; and secondly, the five months from July 1st, 1919, to November 30th, 1919. Have you prepared such a table?

A. Yes, sir.

Q. Is the table which I now show you such table (Handing paper to witness)?

A. That is the table, yes, sir.

Q. This correctly sets forth the facts that purport to be stated on it?

A. Yes, sir.

Q. And this shows, does it, the actual amount in barrels
1126 of oil retained by the Eureka Pipe Line Company out of the one per cent. deductions on the through shipments made through them under I. C. C. tariffs for the period shown?

A. Yes, sir, it does.

Mr. Crawford: I offer this in evidence and ask it be marked Plaintiff's Exhibit 53.

Paper received in evidence. Marked Plaintiff's Exhibit 53.

1127 Q. Referring now to Plaintiff's Exhibit 53, these figures as I understand, represent barrels, do they?

A. Yes, sir.

Q. And what in each case do the last two figures represent?

A. They represent hundredths of a barrel.

Q. That is take the case of Pennsylvania Grade Oil, you show that in the first period your company received or retained 10,775 barrels and .96 of one barrel?

A. Yes, sir.

Q. And in the second period 4,714 barrels and .59 of one barrel?

A. Yes, sir.

Q. And that in the total the amount in the first period was 31,179 barrels and .78 of a barrel?

A. Yes, sir.

Q. And in the second period 14,845 barrels and .62 of a barrel?

A. Yes, sir.

Q. I hand you another table, and ask you to state generally what it is?

A. This is a statement of the oil account of Pennsylvania Grade Oil for the twelve months ending June 30th, 1919, in barrels of 42 gallons, beginning with stocks on June 30th, 1918, showing the receipts and deliveries and loss for the year, and starts at
1128 the end of June 30th, 1919. It also shows the details of the fluid loss and is a statement of the over and short account during that period.

Q. Beginning with the first item, what is meant by "Stocks, June 30th, 1918"?

A. It means stocks of fluid in our tanks and the main lines, any of the tanks.

Q. You mean that is the amount of oil of this grade that was on hand at that date?

A. Yes, sir, that means stocks of Pennsylvania Grade Oil.

Q. Answer the question because I prefer my own phraseology. You mean that is the amount of oil of this grade that was on hand at that date?

A. Yes, sir.

Q. Is that amount on hand which you designate as "Stocks" a permanent amount, a permanent figure, or is it a variable figure?

A. It is a variable figure.

Q. And these figures that you give here are simply the figures for June 30th, 1918, I mean in the first item?

A. Yes, sir.

Q. Is it the fact that there may have been more or less the day before or the day after?

A. Oh, yes. It varies every day.

Q. That is just the reading on June 30th, 1918, is it?

1129 A. Yes, sir.

Q. You said something about this being the contents of the tanks in the main line. What did you mean to exclude from that?

A. That is included in that; that is in the gravity lines.

Q. The gravity lines are not included?

A. No, sir.

Q. Are the contents of the gravity lines usually or ever taken into account in making your inventory?

A. No, sir, they are never taken into account.

Q. Do you know why or isn't that within your jurisdiction?

A. I could not tell you that, no, sir.

Q. I don't want you to speculate if you cannot tell definitely?

A. No, I cannot tell.

Q. The fact is that that is the uniform practice, not to include anything in the gravity lines?

A. That is the practice.

Q. And these so-called stocks whether at the beginning or the end of the period and whether relating to Pennsylvania Grade or other grades of oil to which you may testify do not include any oil standing in gravity lines on the specific date, is that right?

A. Yes, they do not include that.

1130 Q. Following down below that statement under the head of Receipts, I suppose the balances there stated are as specified of amounts that you received in that period from the various pipe line companies or other companies or from runs from wells as specified?

A. Yes, sir.

Q. What is set down there as having been received from the South West Pennsylvania Pipe Lines is oil which came from the State of Pennsylvania from that company into your lines?

A. Yes.

Q. And what is set down opposite the Buckeye Pipe Line Company represents the amounts received from the State of Ohio through the lines of the Buckeye and delivered into your lines?

A. Yes, sir.

Q. What about the United Fuel Gas Company, where is that?

A. The United Fuel Gas Company amount was received at Cabin Creek, West Virginia.

Q. And then transported?

A. Yes, sir, transported East on Interstate tariffs.

Q. What about the Ohio Fuel Oil Company?

A. That was received at Cabin Creek, West Virginia.

Q. Plaintiff's Exhibit 4, Sheet 1, which is a statement showing deliveries of crude oil made by the Eureka Pipe Line
1131 Company for the twelve months in question does not appear to mention these last two items nor does it mention the next item of Ohio Cities Gas Company 230,004.95 barrels. Will you explain where the items appear which are included in this table of receipts here in Plaintiff's Exhibit 4, if they do appear?

A. The credit balances of the United Fuel Gas Company and the Ohio Fuel Oil Company were sold to the Atlantic Refining Company and that in turn was delivered to Philadelphia on the Atlantic Refining Company's tender. That appears in I. C. C. tariff 149.

Q. The figures in Plaintiff's Exhibit 4 are the figures of deliveries, are they?

A. Yes, sir.

Q. Whereas the figures that you are now discussing in the table under consideration are figures for receipts?

A. Yes, sir.

Q. Would they necessarily be identical?

A. No, sir.

Q. Do I understand you that these two amounts which are set down as received from the Ohio Fuel Oil Company and the Ohio Fuel Gas Company are included in the amount of 40,070.67 barrels which are entered in Plaintiff's Exhibit 4 near the bottom as "Philadelphia, Pa. Eureka I. C. C. 149"?

A. Yes, sir.

1132 Q. What about the Ohio Cities Gas Company which is set down in the table of receipts as 230,004.95? What corresponds to that if anything in the table of deliveries marked Plaintiff's Exhibit 4?

A. That was tendered out on Tariff 158. The amounts are not necessarily the same, but it was all tendered out on Tariff 158 for Marcus Hook.

Q. This amount on Plaintiff's Exhibit 4 near the bottom for "Marcus Hook, Pa. Eureka I. C. C. 158, 229,099.60"—does that represent substantially the same transaction?

A. Yes, sir.

Q. Under the head of "Deliveries" will you compare the deliveries with those shown on Sheet 1, Plaintiff's Exhibit 4, and show the corresponding item?

A. The deliveries to the Standard Oil Company at Parkersburg of 802,164.22 barrels correspond to the first item on Exhibit 4, Sheet 1.

Q. The amounts are identical, are they not?

A. Yes, sir.

Q. Go on?

A. The deliveries to the Ohio Valley Refining Company of 179,737.77 barrels corresponds to the amount shown on Plaintiff's Exhibit 4.

Q. The amount is identical, is it not?

A. The amount is identical. The deliveries to the Elk
1133 Refining Company of 257,148.19 barrels also corresponds to the amount shown on Plaintiff's Exhibit 4. Also the deliveries to the Pittsburgh & West Virginia Gas Company, the Carnegie Natural Gas Company and the Hope Natural Gas Company, amounting in all to 49.37 barrels corresponds to the three amounts shown to those parties on Plaintiff's Exhibit 4.

Q. Those items are identical, are they not?

A. Yes, sir.

Q. Pass to the item of West Virginia Pipe Line Company and discuss that?

A. The deliveries to the West Virginia Pipe Line Company of 131,811.67 barrels correspond with the amount shown on Plaintiff's Exhibit 4, to the West Virginia Pipe Line Company.

Q. Those items are identical?

A. Yes, sir.

Q. Take up next the Pure Oil Pipe Line Company item?

A. The deliveries to the Pure Oil Pipe Line Company amounting to 735,878.72 barrels correspond to two items shown on Plaintiff's Exhibit 4, namely, one item of 506,779.12 barrels, and the second item from the last on that sheet, amounting to 229,099.60 barrels.

Q. The item of 735,878.72 is the sum of the other two items on Plaintiff's Exhibit 4?

A. Yes, sir.

1134 Q. Now will you go back to the item of Southern Pipe Line Company of 4,988,117.25 barrels and explain to what items in Plaintiff's Exhibit 4 that amount corresponds?

A. That will not check out with the items shown on Plaintiff's Exhibit 4, but includes the delivery to the Southern Pipe Line Company amounting to 3,646,013.62 barrels. It also includes the various items in the next table.

Q. Can you enumerate them or is it the fact that it is necessary to take the deliveries to the Southern and the South West together and then equate them with a number of items in Plaintiff's Exhibit 4?

A. It would not quite check out then for the reason that there is a duplicate handling shown on this oil account and it would not show them double.

Q. Let us see how nearly that will check out. Am I right first in saying you must check together the items of deliveries to the Southern and to the South West in the table which is now under consideration and equate the sum of those against the number of different items in Plaintiff's Exhibit 4?

A. Yes, sir; that would generally make it.

Q. The first item is the one you have mentioned of the Southern Pipe Line Company 3,646,013.62 barrels. Read off the entire item to which you now refer that has to be added in. Read across the line, the description and the figures.

1135 A. Deliveries to South West Pennsylvania Pipe Lines 722,704.79.

Q. You are reading now from Plaintiff's Exhibit 4, are you?

A. Yes, sir.

For Bayonne, 622,037.29.
Again for Bayonne, 713,247.74.
For Bayonne, 19,976.52.
For Claremont, 512,446.94.
For Philadelphia, 103,171.26.
For Philadelphia 62,799.87.
For Franklin, 227,483.27.
For Franklin, 12,314.08.
For Franklin, 31,857.61.
For Olean, 134.308.93.
For Olean 500,039.71.
For Olean 73,341.66.
For Olean 200,702.12.
For Bramel Point, 14,952.35.
For Pittsburgh, 6,424.50.
For sundry points, Pennsylvania 54,049.01.
For sundry points, Pennsylvania, 26,455.48.
For Philadelphia, 40,070.67.

That is all.

1136 Q. While those amounts are being added up will you yourself add up the two amounts in the table we are discussing, of deliveries to the Southern and the South West?

A. Yes, sir.

Mr. Crawford: As this examination is somewhat prolonged, I ask that this table be marked for identification until I have fully completed by preliminary examination in regard to it.

Paper marked Plaintiff's Exhibit 54 for identification.

Q. Are you now prepared to give that?

A. Yes, sir.

Q. Referring to Plaintiff's Exhibit 54 for identification please state the sum of the two items set down under the head of deliveries to the Southern Pipe Line Company and the South West Pennsylvania Pipe Lines?

A. The sum is 6,977,670.45.

Q. What do you make the total of these various amounts which you have read from Plaintiff's Exhibit 4 as corresponding to the total of 6,977,670.45, made up by adding together the two items of deliveries to the Southern Pipe Line Company and the South West Pennsylvania Pipe Lines on Exhibit 54 for identification?

A. 7,723,397.42.

1137 Q. How do you explain the difference between those two amounts?

A. There is some Corning oil and some Cabell oil.

Q. Where is Corning and Cabell oil?

A. There is some Cabell Oil in the amount shown as 3,646,013.62.

Q. Have you the data here for stating how much that is?

A. No, sir, it is not shown on there.

Q. I hand you another paper and ask you whether this is a statement prepared by you as regards Corning Oil similar in character to Plaintiff's Exhibit 54 for identification?

A. Yes, sir, it is.

Q. Can you refresh your memory by it and state what were the receipts of Corning Oil during this twelve months period?

A. The receipts of Corning Oil from the Buckeye Pipe Line Company amounted to 853,382.69 barrels.

Mr. Crawford: I ask to have this paper marked for identification.

Paper marked Plaintiff's Exhibit 55 for identification.

Q. Do I understand you that the difference between the two totals to which you testified a little while ago which I make 745,726.97 was accounted for by the fact that Corning Oil was included in the figures taken from Plaintiff's Exhibit 4?

1138 A. Yes, sir, that is part of the difference.

Q. Refer again to Plaintiff's Exhibit 55 for identification and state if you can what the deliveries of Corning Oil were?

A. The deliveries of Corning Oil to the Southern Pipe Line Company during that period were 748,090.02 barrels.

Q. Comparing those figures with the difference between the two totals which you gave a short time ago what do you say then as to the difference?

A. There was a small amount of Cabell Oil included in that 6,977,670.45,—I think seven or eight thousand barrels.

Q. Are you not in error in saying that any amount of Cabell Oil is included in the 6,977,670.45? Wasn't that included in the larger amount of 748,090.02 taken from Plaintiff's Exhibit 4?

A. Yes, sir.

Q. It is apparent that the amount that you have testified to of deliveries of Corning Oil, namely, 748,090.02 is slightly larger than the difference of the two totals that you gave us, and that if you further bring into consideration the amount of Cabell Oil the assets would be still greater. What do you say in view of those facts?

Q. On our oil account marked Plaintiff's Exhibit 54 for identification it shows some duplicate amounts. As it winds around the State line it would be a delivery at one place to the South

1139 West Pennsylvania Pipe Lines and come back, and later on be a delivery to the Southern. We have eliminated that on Plaintiff's Exhibit 4, but it appears in the oil account here.

Q. Then do you mean to say that taking into account the Corning and the Cabell deliveries and allowing for duplications, that the total of 6,977,670.45 on Plaintiff's Exhibit 54 for identification corresponds to the total of 7,723,397.42 on Plaintiff's Exhibit 4?

A. Yes, sir.

Q. Reverting to Plaintiff's Exhibit 54 for identification, the next item to which I direct your attention is that which reads, "Net Fluid Loss for the Year Ending June 30, 1919, 24,637.42". Will you state generally what is meant by fluid loss? Do not at this moment go into the analysis. I will take that up presently. State generally what is meant by fluid loss. I mean as the accounts in your company are kept in the ordinary operation and course of business?

A. Fluid Loss is in accounting for the receipts that you do not get what the other line charges you with delivering. There is a certain loss there.

Q. What do you mean by that, that you do not get it?

A. That you do not receive in your tank what the collecting pipe line companies report delivering, and there is a loss.

1140 Q. Is this a fair statement, that a certain amount of oil has disappeared which you cannot find or account for and the receipt of which you are charged with, and that is set down as fluid loss?

A. Yes, sir.

Q. And that is in a general way what is meant by that item, is it?

A. Yes, sir.

Q. The fluid loss then for those twelve months was 24,637.42 barrels?

A. Yes, sir.

Q. And that added to the total delivered is a gross total of 9,109,097.81 barrels of oil which passed out of your possession in that time, is that right?

A. Yes, sir.

Q. When you took the account of stock on June 30, 1919 then you found, did you not, that you had delivered more in the aggregate than you had received?

A. Yes, sir.

Q. And you found that the amount of oil on hand on June 30th, 1919, of this particular grade excluding I suppose as before the gravity lines was less than it was at the beginning by 120,642.41?

A. Yes, sir.

Q. And that is what you mean by decrease in stocks?

1141 A. Yes, sir.

Q. Will you take up the second table on that page entitled "Analysis of Fluid Loss", and take up the first item, "Gains, 2% on Runs, 125,675.94." What does that mean?

A. That means the deduction of two per cent. from all runs received from producers.

Q. That is as has been previously testified here, that represents the difference between the hundred per cent. which is in the customer's tank when the run begins and the 98 per cent. with which you charge yourselves in accounting?

A. Yes, sir.

Q. And the total amount for the year in Pennsylvania Grade Oil of that two per cent. is the figures given here?

A. Yes.
Q. That is to say 125,675.94 barrels?
A. Yes, sir.
Q. What is meant by the next item, "Expansion"?
A. There is a certain amount of expansion or shrinkage in all the tanks, and that is the net amount for the year.
Q. Expansion occurs from what cause?
A. Swelling of the oil.
Q. What causes the swelling of the oil?
A. The heat.
Q. Change in temperature?
1142 A. Yes, change in temperature.
Q. And may shrinkage occur from the same cause?
A. Yes, sir.
Q. And those figures represent a net gain in that process of expansion and contraction; is that right?
A. Yes, sir.
Q. For the year?
A. Yes, sir.
Q. So that makes the total amount of gains which you charge yourself with 125,919.98 barrels, does it?
A. Yes, sir.
Q. Under the head of "Losses", take up the separate items, first, "Wells to Stations, 44,434.66 barrels." What does that mean?
A. That means I believe,—I believe that means that that is the amount received from the producer's tank,—that is the amount lost between the producer's tank and our first stock tanks.
Q. You say that you believe that. Of course we understand that you are not a field man, but as far as your books are kept what does it represent, or does it represent that?
A. I believe it does. I am not very familiar with that.
Q. You know how your books are kept, don't you?
A. We only keep it on the books as "Wells to Station."
1143 Q. Who would know about that if you do not?
A. Mr. Kenney I believe would know.
Q. Or Mr. Towl?
A. Mr. Towl might, very likely.
Q. At any rate that is an item that appears on your books in the form of "Wells to Stations"?
A. Yes, sir.
Q. And what about these subsequent items here, "On Pumpings" "Water Drawn", "Worthless Thrown Away"? Can you state from your own knowledge what those represent?
A. No, sir, except what they say.
Q. You mean to say you get returns under those heads?
A. Yes, sir.
Q. And enter them in the books in that way?
A. Yes.
Q. And from whom do you get the returns?
A. Mr. Kenney.

Q. Mr. Kenney then would know personally exactly what they cover?
A. Yes, sir.
Q. Do you know what this amount of "Allowances to Ohio Valley Refining Company" is?
A. Not particularly, no, sir.
Q. All that you can say is that those amounts are the
1144 amounts that appear on your books under those headings. Is that so?
A. Yes, sir.
Q. As they are returned to you by Mr. Kenney?
A. Yes, sir.
Q. Assuming for the present that those returns are correct, it shows what you call the net fluid loss of a certain amount, does it.
A. Yes, sir.
Q. What amount?
A. 24,637.42 barrels.
Q. That is the same amount which appears in the first table as fluid loss for the year, is it?
A. Yes, sir.
Q. Take the third table, "Over and Short Account, Penna Grade Oil, for twelve months ending June 30, 1919"—what is the Over and Short Account, what does it comprise?
A. It means the surplus over and above what liabilities we have.
Q. On any given date?
A. On that date, yes, sir.
Q. On any given date?
A. Yes, on any given date.
Q. And here on the date of June 30, 1918?
1145 A. Yes, sir.
Q. Is that a fixed amount or does it vary from day to day?
A. It varies.
Q. It does not follow therefore that this amount was the same on the day before or the day after?
A. No, sir.
Q. That is the reading of that day?
A. That is the reading of it on that day.
Q. Down below at the bottom of that table you have given a similar reading for June 30, 1919, have you not?
A. Yes, sir.
Q. That is one year later?
A. Yes, sir.
Q. And that shows a balance in the over and short account of how much?
A. 50,466.52 barrels.
Q. What is the difference between those two?
A. There is a decrease for the year of 8,287.23 barrels.
Q. In other words, your surplus on the last date over and above your liabilities on that date was less by that amount than it was a year earlier?
A. Yes, sir.

Q. Go back a moment. I notice that the third item was
1146 "Eureka's Proportion of the 1% Deduction on I. C. C. Tariffs, 10,775.96." Is that the same amount which appears on Plaintiff's Exhibit 53 under the same general head?

A. Yes, sir.

Q. In other words, that is the amount that your company realized out of its proportion of the one per cent deduction on through traffic, was it not?

A. Yes, sir.

Q. Of Pennsylvania Grade Oil?

A. Yes, sir.

Q. On the left hand column is inserted an item "Fluid Loss for the Year 24,637.42". Is that the same amount as given in the two preceding tables which you have explained?

A. Yes, sir.

Q. What is meant by the next item of 16,418.41 barrels, "Increase in Worthless Matter as shown by Annual Inspection"?

A. It is the custom of pipe line companies to make an annual inspection of all the tanks on the 1st of September of each year, and it was found on that date——

Q. Which September 1st?

A. On September 1st of 1918 that the worthless matter increased over the previous inspection 16,418.41 barrels.

Q. Do you know what is meant by worthless matter in your system?

1147 A. Yes, sir.

Q. In your system of doing business?

A. Yes.

Q. Please explain?

A. It is sediment and water which is entirely worthless matter, and there is a B. S. in the oil, a certain amount of worthless matter called B. S.

Q. Without going into details the letter B. S. is a trade designation for refuse, is it not?

A. Yes.

Q. Which gathers in the bottom of the tank?

A. Yes, sir

Q. Now if the company had added to its balance in over and short account as of June 30th, 1918, the amount of its proportion of the 1% deductions, and had from the sum of those two amounts—which would have been about 70,000 barrels or thereabouts—had deducted these last two items that aggregate 41,000 barrels, it would have shown a shortage, or rather it would have shown a decrease of something like 29,000 barrels, would it not?

A. Yes, sir.

Q. I see an item here, the second item of "Credit Balance Bought 21,992.64". What does that indicate?

A. That means that amount of oil bought from shippers.

1148 Q. It means that credit balance, does it not?

A. Yes, sir, credit balances.

Q. It means that the company bought that amount of credit bal-

ances from shippers to whose credit those balances stood on the books of the company?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And having bought that amount of credit balances it bought the balance in the over and short account up to the figure which you have given?

A. Yes, sir.

Q. Will you please add together the amount of credit balances that were bought and the amount by which the balance in the over and short account June 30th, 1918, exceeded the same balance on June 30th, 1919? Please give the total?

A. 30,279.87.

Q. It appears, does it not, that as far as Pennsylvania Grade Oil is concerned the company lost over 30,000 barrels out of its surplus except as it had itself offset that in part by a purchase of credit balances?

A. Yes, sir.

Mr. Crawford: I offer this Plaintiff's Exhibit 54 for identification in evidence.

1149 Plaintiff's Exhibit 54 for identification received in evidence.

1150 *Deliveries.*

To Standard Oil Co., Parkersburg, W. Va.	802,164.22	
Ohio Valley Refg. Co., St. Mary's, W. Va.	179,737.77	
Elk Refining Co., Falling Rock, W. Va.	257,148.19	
Pittsburgh & W. Va. Gas Co., Downs, W. Va.	32.61	
Carnegia Nat. Gas Co., Downs, W. Va.	11.90	
Hope Nat. Gas Co., Downs, W. Va.	4.86	
Southern Pipe Line Company	4,988,117.25	
South West Penna. Pipe Lines	1,989,553.20	
West Virginia Pipe Line Company	131,811.67	
Pure Oil Pipe Line Company	735,878.72	
Total deliveries	9,084,460.39	
Fluid loss for year	24,637.42	
		9,109,097.81
Decrease in stocks		120,642.51
Stocks June 30, 1919		707,535.43

Analysis of Fluid Loss.

Gains:		
2% on Runs	125,675.94	
Expansion	244.04	
		125,919.98
Losses:		
Wells to Stations	44,434.66	
On Pumpings	81,504.54	
Water Drawn	12,945.73	
Worthless Thrown Away	1,928.31	
Allowance to Ohio Valley Refg. Co	125.00	
Accidents	9,619.16	
		150,557.40

1151 Q. Take up Plaintiff's Exhibit 55 for identification, and I ask you whether this is a table relating to the Corning Oil which is similar in general character and in the information which it presents to Plaintiff's Exhibit 54, except that it represents a different grade of oil?

A. Yes, sir.

Q. And will your answers in regard to the various items concerned in it be the same in substance as those given in regard to Plaintiff's Exhibit 54, except for the difference in the identical figures?

A. Yes, sir.

Q. I notice under the head of "Analysis of Fluid Loss", you have the word "Shrinkage", which did not occur in Plaintiff's
1152 Exhibit 54. Can you state what that means "Shrinkage 1,746.15" barrels?

A. That means during that period there was that amount of shrinkage in the oil in the tanks.

Q. Is that the same shrinkage which is referred to under the head of "Contraction from Heat" or is it from some other cause?

A. No, it is under the same heading "Contraction from Heat."

Q. Then reading these two together am I to understand that in case of Pennsylvania Grade Oil there was a net increase from heat and in case of the Corning there was a net decrease?

A. Yes, sir.

Q. So if you had substituted for shrinkage the words "Contraction from change of Temperature," or something of that sort that would be proper?

A. I would say we call that due to temperature whether an increase or decrease.

Q. Is a shrinkage due to temperature?

A. Yes, sir.

Q. And therefore it is under the same general category as the item of expansion in Plaintiff's Exhibit 54?

A. Yes, sir.

1153 Q. And the table of "Balance in Over and Short Account" shows a decline in the surplus between the beginning and the end of the twelve months of some 3,000 barrels, does it not?
A. Yes, sir.

Mr. Crawford: I offer this in evidence and ask that it be marked Plaintiff's Exhibit 55.

Plaintiff's Exhibit 55 for identification received in evidence.

1154 Q. I show you a table and ask you if that is a table that you prepared in like character in regard to Cabell Oil?
A. Yes, sir.
Q. And you have testified to the same general effect in regard to the items there as in regard to the other two except as they would differ in actual figures?
A. Yes, sir.
Q. And this also shows a decline in the surplus of Cabell Oil for the year of some 800 barrels, does it not?
A. Yes, sir.

Mr. Crawford: I offer this in evidence and ask to have it marked Plaintiff's Exhibit 56.

Paper marked Plaintiff's Exhibit 56.

1155 Q. These figures of shrinkage, from whom did you receive those?
A. Mr. Kenney.
Q. All you now undertake to testify to is that this is the amount which stands upon your books?
A. Yes, sir.
Q. Under that head?
A. Yes, sir.

Mr. Crawford: We will have that explained by another witness.

1156 Q. I show you another table. Is that table prepared by you, in regard to Somerset Oil, of like character with Exhibits 54 and 55?
A. Yes sir.
Q. And would your answers in general in regard to this be the same as those in regard to Exhibits 54 and 55, except for the differences in figures, the identical amounts?
A. Yes sir.

Mr. Crawford: I offer this in evidence and ask to have it marked Plaintiff's Exhibit 57.

The table was marked Plaintiff's Exhibit 57 of this date.

1157 Q. Looking now at Plaintiff's Exhibit 57, I notice under the head of receipts, an item of "net runs from wells." Will you please explain that?

A. That is the net runs received from wells of Somerset oil in West Virginia.

Q. You mean that small amount of oil, which, as has been testified to, was produced in West Virginia near to the border of Kentucky, and was piped over into Kentucky and then came back again?

A. Yes sir.

Q. Through the lines of the Cumberland Company?

A. Yes sir.

Q. You charge yourself with it here as a receipt, do you?

A. Yes sir.

Q. Does that correspond to the item under "deliveries" of Cumberland Pipe Line Company, Inc., 1,459.51?

A. That is part of it.

Q. Well, how do you explain the disparity in the figures?

A. I don't know as I can explain, but it would not necessarily have to agree. We receive those runs from the producers, I presume in our stock tanks, and then it is delivered across.

1158 Q. Well, might the fact that this inventory is made up on a certain date, and does not speak of the day before or the day after, account for this slight difference?

A. Yes, I believe it would.

Q. Under the head of "analysis of fluid loss" on Plaintiff's Exhibit 57, I notice the words "water received." Under the head of "losses" on Plaintiff's Exhibit 54 I notice the item, "water drawn." Is there any relation between those two items? They do not occur in the same table, and therefore I do not mean any relation of quantity, but I mean a relation of character?

A. Under the head of "water received," I believe the water is received into the lines for the purpose of making repairs, and that is part of our fluid in the system.

Q. That swells the amount of what you call fluid in the system?

A. Yes sir.

Q. Which includes oil and anything else that may be mixed with the oil?

A. Yes sir.

Q. And the "water drawn," as I referred to it, in Plaintiff's Exhibit 54, do you know what that means?

A. It could either be part of that water drawn out, or other settlings from the oil. There are always more or less settlings

1159 of water from the oil, and that is drawn.

Q. Drawn out, run out of the pipes, I suppose?

A. Run out of our tanks.

Q. Run out of your tanks. Now it appears from your table of the over and short account in this Exhibit 57 that there is a certain amount of 4,495.89 entered in red ink, and also having the word "debit" opposite to it. Will you please explain that item?

A. That means that we did not have enough good oil to meet our liabilities by that amount.

Q. On that day?

A. On that day.

Q. At the end of the year, that is on June 30th, 1919, what was the condition in that respect?

A. We did not have enough good oil to meet our liabilities on June 30, 1919, by 2,176.96 barrels.

Q. The shortage, however, had been decreased by some twenty-three hundred barrels, had it not?

A. Yes sir.

Q. I hand you another table and ask you if this was prepared by you?

A. Yes sir.

Q. Is that a table similar to those which you have just been testifying to, prepared with reference to Mid-Continent Oil?

1160 A. Yes sir.

Q. And would your explanation of the various items and your testimony in regard to them be substantially the same as you have already given concerning Plaintiff's Exhibits 54, 55, 56 and 57, except for the difference in the individual figures?

A. Yes sir.

Mr. Crawford: I offer this in evidence and ask that it be marked Plaintiff's Exhibit 58.

The table was marked Plaintiff's Exhibit 58 of this date.

1161 Q. Referring to Plaintiff's Exhibit 58, under the heading of "deliveries" I notice you have one item of deliveries to the Pure Oil Pipe Line Company and one to the Pure Oil Company. Do you know what is meant by the delivery to the Pure Oil Company? Are you able to explain that difference in terminology?

A. No sir, but I am quite sure that should be the Pure Oil Pipe Line Company, both of those amounts. I do not know how they are separated. The deliveries were made to the Pure Oil Pipe Line Company, both amounts.

Q. In both cases?

A. Yes sir.

Mr. Crawford: Well, I did not notice that until after I had offered it in evidence. If counsel do not object, I would like to have the witness insert the words "Pipe Line" after the words "Pure Oil," since that is his testimony that those deliveries were made to the Pure Oil Pipe Line Company.

Mr. Mathews: No objection to that.

Mr. Avis: I would like, before he inserts it, to have him check up and see if he can what the facts are. It may have been consigned to Pure Oil Company, at Morgantown, on I. C. C. Tariff, and it may have actually been delivered. Your books will show it, as I take it.

1162 The Witness: Yes, but that would not make any difference as far as this oil account is concerned. We deliver to the Pure Oil Pipe Line Company, into their lines. I did not attempt to show on here for whose account the delivery was made.

Mr. Crawford: Well, I have put it in evidence and I do not claim the right to change it if you object.

Mr. Avis: The only thing is, Mr. Crawford, somehow I have got it in the back of my head that somebody did state that some oil was delivered to the Pure Oil Company and put in the tanks of the Pure Oil Pipe Line Company near Morgantown; one consignment was to the Pure Oil Company. That is what I had in mind when I spoke a moment ago. I may be wrong in that. If the witness knows that was not a consignment to the Pure Oil Company at Morgantown, I have no objection to the change being made.

The Witness: I am quite sure that that was a delivery, all of it was a delivery to the Pure Oil Pipe Line Company, and I do not think any of it was consigned to the Pure Oil Company.

Q. Consigned? You mean at Morgantown, do you?

A. Yes.

Q. Or near Morgantown?

1163 A. Near Morgantown.

Mr. Avis: Just let it go with that explanation, Mr. Crawford.

Mr. Crawford: All right, let it go, then.

Q. The over and short account shows an apparent gain for the year of slightly less than 2,000 barrels, does it not?

A. Slightly over.

Q. Well, it is slightly less if you take into the account "credit balance bought," is it not?

A. Oh, yes sir.

Mr. Crawford: Now, I have similar tables for the period from July 1st, 1919, to November 30th, 1919. I can, of course, put them in if counsel for the other side think it worth while. They are rather voluminous. They are here for your inspection.

Mr. Avis: Suppose, if you do not mind, let us look at them, and if we can eliminate them I do not see any use of encumbering the record.

Mr. Mathews: Did you call for that period?

Mr. Avis: I do not know; possibly I did.

Mr. Crawford: There is quite a bit of uncertainty about the language of some of your requirements, and I did not want to

1164 get caught short; but at present it does not seem to me that they are essential.

Now, what I will do will be this: I will have the witness identify them and mark them, and they can be put in afterwards if we decide on that. Of course, we cannot keep the witness here indefinitely.

Mr. Avis: All right.

Q. Have you prepared tables of a similar character for the various grades of oil, for the period from July 1st, 1919, to November 30th, 1919?

A. Yes sir.

Q. And are these five sheets which I now hand you such tables?

A. Yes sir.

Mr. Crawford: I ask that these be marked for Identification.

The sheets were marked for identification as follows:

Pennsylvania Grade Oil, Plaintiff's Exhibit X for Identification.
Somerset Oil, Plaintiff's Exhibit X-1 for Identification.
Cabell Oil, Plaintiff's Exhibit X-2 for Identification.
Corning Oil, Plaintiff's Exhibit X-3 for Identification.
Mid-Continent Oil, Plaintiff's Exhibit X-4 for Identification.

1165 Q. Now, Mr. Swisher, I hand you another table and ask you whether pou prepared it, and if so please state in a general way what it shows?

A. Yes sir, I prepared this table. It is a statement of Pennsylvania Grade Oil, showing liabilities, surplus, sediment and water, and gross stock at the close of each month from June 30th, 1919, to November 30th, 1919, inclusive.

Q. In barrels, is it?

A. In barrels.

Q. What do you mean by liabilities?

A. The liabilities are oil that we owe shippers and producers.

Q. Well, it is the amount of the credit balances, is it not?

A. Yes sir.

Q. Which stand to the credit of various parties on your books?

A. Yes sir.

Q. And under the head of "producers' balances," I suppose those are the amounts which stand in what are called, I think, the production accounts?

A. Yes, the production accounts.

Q. And under the head of general balances, what balances

1166 are those?

A. That stands to the credit of various parties on the general oil books.

Q. As testified to, I think, by Mr. Kenny or by yourself, I have forgotten. Did you explain that?

A. Yes, I think that I did.

Q. In order that your explanation may be in close conjunction with this table, and so that the court may not be confused, you might explain again just what the system is of these credit balances. When you receive oil from a producer it is credited to him where?

A. It is credited to the producer on the production books?

Q. Yes. If he transfers the oil to some one else, what kind of an entry do you make on the production books?

A. It is charged to his account on the production books, and credited to the party who buys the oil on the general oil books.

Q. And under the head of the total liabilities, you have put down the sum of the amounts of credit balances on that date in the two sets of books, have you?

A. Yes sir.

Q. Under the head of surplus, that shows what?

A. That shows the amount of good oil over and above our

1167 liabilities, that we have in our system.

Q. On the expiration of each month?

A. On those dates, yes, sir, the expiration.

Q. Is there anything here to show whether you have or have not,

during the period covered, that is to say the previous month, in any case purchased credit balances?

A. No, sir, there is nothing on this report to show that.

Q. This simply shows the net result?

A. Yes, sir.

Q. And to explain this, in a particular instance, referring to Plaintiff's Exhibit 54, which showed on June 30th, 1918, a balance in over and short account of 58,753.75 barrels, is that the same amount which in the table we are now considering is entered under the head of surplus?

A. Yes, sir.

Q. And at the bottom of Plaintiff's Exhibit 54, showing what is called there the balance in over and and short account, June 30th, 1919, 50,463.52 barrels, is that the same amount which is entered in this table opposite June 30th, 1919, under the head of surplus?

A. Yes, sir.

Q. By Exhibit 54 it appears, as you explained, that in order to arrive at that balance in over and short account on June 30th, 1919,

1168 the company had purchased credit balances to the amount of 21,992.64 barrels. You did not intend, by any figures in this column of surplus or anywhere else on this table, to contradict that item of credit balances bought, or your testimony in regard to it, do you?

A. No, sir.

Q. That is to say, that transaction or that purchase has entered into the totals and is there by implication, though not expressly stated?

A. Yes, sir.

Q. To connect up again, in Exhibit 54 the item of stocks June 30th, 1918, 828,177.94 is the same as your item in this table of gross stocks 828,177.94, is it not?

A. Yes, sir.

Q. And the item in Exhibit 54 of stocks June 30th, 1919, 707,535.43, that is the same item as the one under the head of gross stocks on the same date on this table?

A. Yes, sir.

Q. You have put down here certain figures on this table under the head of sediment and water. Will you just explain what they mean?

A. Sediment and water means the amount of worthless matter in our tanks.

Q. How often and when do you take an inventory of the worthless matter?

1169 A. There is an inspection or inventory taken of all our tanks on September 1st of each year.

Q. So that the item of 80,652.17 of sediment and water represents the results of the inspection of the previous September 1st?

A. Yes, sir.

Q. That is, September 1st, 1917?

A. Yes, sir.

Q. And carry it along, as of the same amount, for twelve months?

A. Yes, sir.

Q. The amount that is set down here as 97,070.58, opposite the date of September 30th, 1918, is that what was shown by the inspection on September 1st, 1918?

A. Yes, sir.

Q. And looking further down near the bottom, opposite September 30th, 1919, there is an amount of sediment and water of 98,187.81. When was that amount ascertained?

A. That amount was ascertained on September 1st, 1919.

Q. Reading across, do the amounts in the last column constitute the totals of the amounts on the same lines in the columns headed "total liabilities," "surplus" and "sediment and water"?

A. Yes, sir, they do.

1170 Q. In previous exhibits the item has occurred which is indicated in Plaintiff's Exhibit 4, for example, as "increase in worthless matter as shown by annual inspection, 16,418.41." Is that amount the difference between the two amounts of 80,652.17 and 97,070.58?

A. Yes, sir.

Q. I mean, those amounts as shown under the head of sediment and water in this table we are considering?

A. Yes, sir.

Mr. Crawford: I offer this table in evidence and ask that it be marked Plaintiff's Exhibit 59.

The table was marked Plaintiff's Exhibit 59 of this date.

1171 Q. I show you another table and ask if this was prepared by you, and whether this is a similar table in regard to Somerset oil, and whether your testimony in regard to it and explanation of it would be substantially the same?

A. Yes, sir.

Q. I show you another table. Is that one you prepared in relation to Corning Oil?

A. Yes, sir.

Q. And this one is a table in regard to Cabell, is it?

A. Yes, sir.

Q. And this one in regard to Mid-Continent?

A. Yes, sir.

Mr. Crawford: I offer these four in evidence and asked that they be marked Plaintiff's Exhibits 60, 61, 62 and 63.

The table were received in evidence and marked as follows:

Somerset Oil, Plaintiff's Exhibit 60.
Corning Oil, Plaintiff's Exhibit 61.
Cabell Oil, Plaintiff's Exhibit 62.
Mid-Continent Oil, Plaintiff's Exhibit 63.

Said exhibits 60 to 63 inclusive.

1172 Q. In regard to Plaintiff's Exhibits 60 to 63 inclusive, your testimony I suppose would be substantially the same

as in regard to Plaintiff's Exhibit 59, allowing for the difference in the actual figures, would it?

A. Yes, sir.

Q. Look at Exhibit 60, if you will, relating to Somerset Oil. The change in the amount of sediment and water appearing opposite the date of September 30th, 1918, shows the increase in the amount of the worthless matter as shown by the inventory of September 1st, 1918?

A. Yes, sir.

Q. And a similar change a year later reflects the inventory of September 1st, 1919?

A. Yes, sir.

Q. The same is true of any other changes that appear under the heading of sediment and water, in regard to Exhibits 61, 62 and 63, I suppose?

A. Yes, sir.

Q. In no one of these is any specific showing made of amounts which may have been purchased by the company of credit balances during that year, is there?

A. No, sir, they only show balances.

Q. But they are involved in the figures by implication?

A. Yes, sir.

1173 Q. In other words, they have been taken into account in making up these totals?

A. Yes sir.

Q. Referring again to Plaintiff's Exhibits 54 to 58 inclusive, does it appear from any of them that any credit balances were sold by the Company during the twelve months from June 30th, 1918 to June 30th, 1919?

A. No sir.

Q. In fact, were there any such sales made during that period?

A. No sir, there were no sales made.

Q. Mr. Swisher, in response to one of the requests of counsel for the State have you prepared a table showing the consignees of the deliveries shown on a portion of sheet 1 of Plaintiff's Exhibit 4?

A. Yes sir.

Q. To what group of items on sheet 1 of Plaintiff's Exhibit 4 does this new table relate, counting down from the top?

A. That relates to table 4.

Q. That is, to the fourth group of items, is it, on sheet 1 of Plaintiff's Exhibit 4?

A. Yes sir.

1174 Q. Counting down from the top. And this table which you now produce shows the consignees of the various amounts and the destinations, the intial carrier and the number of the I. C. C. Tariff on which the oil was transported, does it?

A. Yes sir.

Mr. Crawford: I offer this in evidence as Plaintiff's Exhibit 64.

The table was received in evidence and marked Plaintiff's Exhibit 64 of this date.

1175 Q. Have you at the request of the counsel for the State prepared a table showing certain other information in connection with Plaintiff's Exhibit 43?

A. Yes sir.

Q. And if so, is the table I hand you that table?

A. Yes sir.

Q. Will you please state just generally what that shows?

A. On this exhibit is shown the consigner, the consignee, destination, and the I. C. C. Tariff on which this oil was moved.

Q. That is the oil which is referred to in Exhibit 43?

A. Yes sir.

Mr. Crawford: I offer the table in evidence and ask to have it marked Plaintiff's Exhibit 65.

The table was marked Plaintiff's Exhibit 65 of this date.

1176 Q. Comparing Plaintiff's Exhibit 65 with the second sheet of Plaintiff's Exhibit 4, will you please state what is the relation between the total of 4,637,888.68 barrels shown on Exhibit 65 and the total of 4,372,524.55 barrels shown on the second sheet of Exhibit 4, if there be any relation?

A. They are the same, with the exception of the last two items on Exhibit 65. Those items are not on the second sheet of Exhibit 4.

Q. That is, Plaintiff's Exhibit 65 includes not only the total shown on sheet 2 of Exhibit 4, but also the two items at the bottom of sheet 1 of Exhibit 4, aggregating 269,170.27?

A. Yes sir, with the exception of the slight amount that I explained, on account of overlapping tenders.

Q. According to my addition, if you add to the total shown on sheet 2 of Exhibit 4 the amount of 269,170.27 on sheet 1, and deduct from it the item of 4,279.63 which you previously testified was not for a delivery made within the twelve months, you have a balance of 4,637,415.19, which differs by a few hundred barrels from the total on Plaintiff's Exhibit 65. Are my figures right?

A. Yes sir.

Q. Then this difference which still remains of about 473
1177 barrels, how would that be accounted for?

A. That is on account of that overlapping of a tender there.

Q. What do you mean by overlapping of a tender?

A. It was explained in previous testimony, on account of oil delivered from Core on account of a tender; delivered at Core to the South West Pennsylvania Pipe Lines, and that would come back, and then that same oil delivered again to the Southern.

Q. That has been explained already in the testimony?

A. Yes sir.

Q. So that these amounts substantially agree, do they?

A. Yes sir.

Mr. Mathews: Mr. Crawford, would you mind asking him to explain the last thing there on Exhibit 64? It will save our coming

back to it. It is apparently a shipment that has no consignee and no destination. I do not just understand what it means.

Mr. Crawford: I have not examined it very closely myself.

Q. Referring now, please, to Exhibit 64, please explain the last two items which read, under the head of consignee "none", and under the head of destination, "no destination."

1178 A. In Pennsylvania, near the State line, there is a small production that has to move across the West Virginia State line to get into the main system. The South West Pipe Lines Tariff 85 is, in connection with The Eureka Pipe Line Company, to provide for the movement of that oil through West Virginia to get it back into the South West Pennsylvania Pipe Line systems, where it can be delivered to any place in the South West system.

Mr. Avis: That is the oil that is handled on that gathering tariff of the South West Pennsylvania Pipe Lines?

The Witness: 85, yes sir. That is the authority for the movement of that oil.

Q. I ought to ask you whether on Plaintiff's Exhibit 64 you give the same explanation in regard to the words "Buckeye," "Prairie," "South West," and "Cumberland," under the head of "initial line" as has been previously given; that is to say, that those are simply the first words of the well-known pipe line companies, whose names begin with those words?

A. Yes sir.

Q. Have you calculated the total amount charged the Cumberland Pipe Line Company on untendered credit balances during the twelve months ended June 30th, 1919, at the rate which I think was testified to, of 1-100th of a cent per barrel per day?

A. Yes sir.

1179 Q. Can you state from memory what the amount was?

A. Not from memory.

Q. Well, I hand you a paper and ask you to refresh your memory by that. Is that paper one which you yourself prepared?

A. Yes sir.

Mr. Avis: We do not make any point on that, Mr. Crawford:

Q. Will you state what the amount was?

A. The amount so charged was $3,213, even.

Q. Then the estimate which I think you made, of somewhat over $5,000, was too large, was it?

A. That covered the whole period of 1918, that $5,000.

Q. That amount was for the year 1918, and this is the amount for the last half of 1918 and the first half of 1919?

A. Yes sir.

Recess until 2:30 p. m.

1180 Afternoon Session.

VERNON S. SWISHER resumed the stand.

Cross-examination.

By Mr. Crawford (continued):

Q. Mr. Swisher, I hand you another table. Is that one of the tables prepared by you?
A. Yes sir.
Q. Or under your direction?
A. Yes sir, under my direction.
Q. Will you explain this table?
A. This is the statement of the credit balances for Somerset oil received from the Cumberland Pipe Line Company for the month of July, 1918, and of tenders applied against the untendered credit balance as tenders were issued.
Q. On June 30th, 1918, what was the amount of the untendered credit balance to the credit of the Cumberland Pipe Line Company?
A. 165,970.44 barrels.
Q. And these items in the first column are the balance of the new credits entered every day against the receipts, are they?
A. Yes sir.
Q. What are the figures in the second column?
A. They represent the amount of tenders at sundry points
1181 in Kentucky applied against that balance.

Mr. Avis: This exhibit is not responsive to any request that we made as I understand it?
Mr. Crawford: No.

Q. You mean it is applied against the balance as of June 30th, 1918, and then against the subsequent credits?
A. Yes sir.
Q. Are these tenders given here in this last column all of the tenders of Somerset oil that your company received notice of from the Cumberland during that month?
A. Yes sir.
Q. The tenders were all made from what point or points?
A. Sundry points in Kentucky.
Q. The amounts entered in the first column of new credits would you say correspond to the daily receipts of oil——
A. Yes sir.
Q. Represent all of the new credits for that month, and the corresponding amounts of oil were all of the Somerset oil received by you during that month, were they?
A. Yes sir.
Q. Down at the bottom there is an item "average amount of new credits daily 10,389." What does that mean?
A. That means the average new credits received daily.

Q. That is corresponding to the average amount of oil re-
1182 ceived daily?
A. Yes sir.
Q. I mean of course Somerset oil? That is what you understand we are talking about, Somerset oil?
A. This is all Somerset oil, yes sir.
Q. And from whom were these tenders received?
A. Mostly from the South Penn Oil Company, occasionally from the Atlantic Refining Company and the Ohio Oil Company.
Q. Two of them you have especially designated. What is the fact about all the others?
A. They are all South Penn Oil Company otherwise.
Q. I hand you also a number of similar statements and ask you whether those are statements prepared by you?
A. Yes sir.
Q. And they are statements covering substantially the same ground as the one you have just testified to but for successive months from August, 1918, to June, 1919, inclusive, are they not?
A. Yes sir.
Q. And in other respects would you make the answers in regard to them as you made to the one just testified to?
A. Yes sir.
Q. They were all prepared under your direction?
A. Yes sir.

1183 Mr. Crawford: I offer these in evidence and ask that they be marked Plaintiff's Exhibit- 66, 66-*a*, 66-*b*, and so on.

Statements received in evidence marked Plaintiff's Exhibits 66, 66-*a* to 66-*l*, inclusive.

Mr. Avis: Counsel for the State do not see the relevancy of this testimony, and I would like counsel on the other side to indicate on the record the relevancy of the testimony.
Mr. Crawford: I do not think that I am called upon to do that, Mr. Avis. You may object to it on any grounds you may see fit.
Mr. Avis: I thought perhaps you might show the relevancy to us and we would not object. From our examination of the exhibit and each page of the exhibit we do not see the relevancy of the testimony and therefore object to it as being irrelevant, improper and immaterial.

Q. At page 566 of the minutes, Mr. Swisher, on your cross-examination appears these questions and answers:

"Q. Have these companies that you are general shipping agent of offices at any place else than Oil City, Pennsylvania?
A. Yes sir.
Q. Whereabouts?
1184 A. Pittsburgh, Lancaster, Pennsylvania; Parkersburg, West Virginia; Winchester, Kentucky; New York City.
Q. Do they all have their offices connected in the same way that you have them in Oil City, Pennsylvania?

A. I think so.
Q. Don't you know so?
A. Well, I should say I know so."

Did you mean in so answering to testify that each of the four companies of which you have stated that you were the general shipping agent had offices at each of these different cities?
A. No sir, I did not intend to.
Q. Will you state what is the fact? Taking them up one at a time, take the City of Pittsburg, which of the companies have offices there?
A. The South West Pennsylvania Pipe Lines and The Eureka Pipe Line Company.
Q. And how is it at Lancaster, Pennsylvania?
A. The only office at Lancaster is the Southern Pipe Company.
Q. What is the fact as to Parkersburg, West Virginia?
A. The only office there is of The Eureka Pipe Line Company.
Q. How about Winchester, Kentucky?
1185 A. That is the Cumberland Pipe Line Company, Incorporated.
Q. How is it at New York City?
A. At New York City, I believe all have an office.
Q. What answer would you now give to the question:

"Q. Do they have their offices connected in the same way that you have them in Oil City, Pennsylvania?"

A. Well, I meant altogether or in adjoining rooms, very handy to each other.
Q. For example, in Pittsburgh, that answer would apply to the two offices having offices there, would it?
A. Yes sir.
Q. Of course it could not apply to Lancaster because there is only one company there, nor at Parkersburg, because you say there is only one company there, nor at Winchester, but it would apply, to New York City?
A. Yes sir.
Q. And that is what you intended to testify to?
A. Yes sir.
Q. At page 589 of the minutes, Mr. Swisher, during your cross-examination you were asked:

"Q. What is the capacity in barrels, that is storage capacity in barrels, of the pipe line system of The Eureka Pipe Line Company?"

Your answer was:

1186 "A. About 170,000 barrels, trunk lines."

Do you wish to make any correction in that answer?
A. Yes sir. I meant all lines exclusive of the gravity lines.

Mr. Avis: Does he mean all trunk lines exclusive of gravity lines or all lines?
The Witness: All lines.

Q. That is to say the trunk lines and the gathering lines exclusive of gravity lines?
A. Yes sir.
Q. On page 595, Mr. Swisher, Mr. Avis referred to your answer and quoted it correctly as relating to trunk lines, then followed these questions and answers:

"Q. What is the total storage capacity of the trunk lines and other lines in which you keep oil or hold oil?
A. I do not know.
Q. Can you furnish that information?
A. I do not believe it could be had," etc.

Since you were then on the stand have you inquired into that matter from others in the company so that you now have the information?
A. I haven't the information, no sir.
Q. Your answers do not seem to be entirely consistent, but doubtless you do not understand me. You now testify as
1187 I understand you that the capacity of all the lines exclusive of the gravity lines, and of course excluding tanks because they were excluded in the beginning, was about 170,000 barrels?
A. Yes sir.
Q. That of course covers the other lines, does it not, that are referred to at page 595? In other words you were asked:

"Q. What is the total storage capacity of the trunk lines and other lines in which you keep oil or hold oil?
A. I do not know."

You now say that that total storage capacity excluding gravity lines was 170,000 barrels?
A. Yes.
Q. Since you so testified which was on December 3rd, you have inquired into the fact, have you not, so that you are now able to testify as you do?
A. Yes sir, oh, yes.

Mr. Avis: At that, the witness' explanation is not very enlightening because there is nothing to indicate what the storage capacity of the gravity lines is.
Mr. Crawford: No, but he was not asked to indicate that.
1188 Mr. Avis: I did not separate it into storage and gathering lines. I asked all lines and he has excluded gravity lines in his answer, and it was certainly inclusive in my question.
Mr. Crawford: I will ask about that.

Q. Do you know what the capacity of the gravity lines is?
A. No sir.

Mr. Crawford: I will admit I have exhausted the information of this witness and I intend to call another witness who will testify in regard to the gravity lines.

Mr. Avis: In regard to the storage capacity of the gravity lines?

Mr. Crawford: Yes, what you call storage capacity and what I call capacity. I want it to clear up the apparent inconsistencies in this witness' testimony. I shall call Mr. Towl and probably Mr. Kenney—Mr. Kenney undoubtedly, and one of them I think will give me all of the information that there is on that subject. This testimony is not intended to be an answer to your request under that head. It is intended to clear up the witness' testimony.

1189 Q. Mr. Swisher, will you look at Plaintiff's Exhibit 45 and note on sheet 2 under the head of "analysis of trunk lines' expenses," item 277, "oil shortage 4,096.35 barrels." Can you explain what that means or what that refers to?

A. That does not refer to any actual oil shortage but it represents the money cost to The Eureka Pipe Line Company for the oil delivered—for their proportion of the one per cent delivered and retained by The Eureka Pipe Line Company. It is in this way: the through rate on the one per cent has to be taken care of by each of the carriers as it is passed along.

Q. How do you mean "taken care of"?

A. Paid for and adjusted. For instance the Mid-Continent rate on the oil is seventy cents a barrel. The first delivering line would pass so much oil to the next carrier and they would collect the full seventy cents on that oil. The next carrier would retain their proportion and pass the balance along but they would have to pay the through pipeage on the amount that had been passed along to them.

Q. Paid to the preceding carrier you mean?

A. Yes sir, the preceding carrier, and that is all the way through, they pay the preceding carrier for the amounts of the through rate that is passed to them and they keep their own amount and pass

1190 the balance along and credit all shortage with the amount they pass along. That is the difference. That is the way that is adjusted. It is really an adjustment.

Q. You were asked to furnish officers of the Prairie Pipe Line Company. Are you able to do that yet?

A. I tried a couple of weeks ago to get them and I asked to-day, and I can furnish you the President, the Vice-President and the Treasurer. There is a party who promised to try to get the rest of the officers and he said he would let me have them by this afternoon but I haven't got it yet.

Q. Give us those that you have?

A. The President of the Prairie Pipe Line Company is William F. Gates: the Vice-President is C. H. Kountz; the Treasurer is R. G. Hare. That is all the officers I know.

Q. Mr. Swisher, I think you stated in the course of your testimony with reference to credit balances of Somerset oil in favor of the Cumberland Pipe Line Company that the average amount of credit balances untendered was 150,000 barrels. That is my recollection. Of what period were you then speaking?

A. I was speaking of the full period of 1918.

Q. You have heard the testimony of Mr. Whitehead, the accountant, that he found the average amount of credit balance to be about 85,000 barrels. That is correct, is it, for the twelve months in question?

1191 A. Yes sir.

Mr. Avis: I understood him to say for the full period of 1918. I thought that he meant for the calendar year 1918 in one of his previous answers.

Q. You meant in your previous answer the calendar year 1918?
A. The calendar year 1918.
Q. And as this of course is one-half of 1918 and one-half of 1919, your answer then given would not apply?
A. No sir.

Mr. Crawford: I think that is all.

Cross-examination.

By Mr. Mathews:

Q. Mr. Swisher, among the numerous schedules which have been prepared under your supervision and filed as exhibits with your testimony, is there any schedule which would enable the court to tell what actual amount of good oil The Eureka Pipe Line Company had on hand or in its system either at the end of the period in question or at any time during that period?
A. Yes sir.
Q. Which schedule do you now refer to?
A. The schedule giving balances.
Q. Exhibit Number 54?
A. Yes sir, this would show it.

1192 Mr. Crawford: Do not say "this would show it." State the exhibit.

Q. Exhibit 54?
A. Exhibit No. 59.

Mr. Crawford: Plaintiff's Exhibits 59 to 63, isn't it, Mr. Swisher?
The Witness: Plaintiff's Exhibits 59 to 63, yes sir.

Q. I will ask you to examine Plaintiff's Exhibit No. 59 which relates to Pennsylvania grade oil and take the date June 30th, 1918, and explain for the benefit of the court how the figures set opposite that date will show the actual amount of good oil then in your system?
A. If you deduct the sediment and water from the gross stocks that would be the net amount of good oil in our system.
Q. Deduct what?
A. The sediment and water from the gross stocks.
Q. Does that apply to the other dates on the same exhibit?
A. Yes sir.

Q. But the sediment and water appear at the same figure for twelve consecutive months whereas the gross stock varied every month. For instance, take the date June 30th, 1919, your gross stock
1193 for that date is at that time 707,535.43 barrels. The sediment and water as of that date is put down at 97,070.58 barrels. The latter figure for sediment and water was the amount apparently ascertained as of September 1st, 1918? That is correct, isn't it?

A. Yes sir.

Q. Well, as of June 30th, 1919, the actual amount of such sediment and water may have been less and may have been more, but it is quite certain that it was not on that date exactly the same as the preceding first day of September, is that true?

A. Yes sir, that is true.

Q. Then this schedule does not show the real and actual amount of good oil which was in your company's system as of June 30th, 1919, is that correct?

A. Yes sir, that is correct. We show the sediment and water one amount until we take the next inspection.

Q. That is a matter of estimate and bookkeeping based upon a figure which we know is not the correct figure to take for any date except September 1st?

Mr. Crawford: I object to that question as containing an assumption that is not proven.

Q. Is that correct?

A. Yes sir.

1194 Q. And that statement applies to each item and each date set forth on Plaintiff's Exhibit 59 with reference to Pennsylvania grade oil, doesn't it?

A. Yes sir.

Q. And the same thing is true as to each of the succeeding exhibits which relate to Corning, Somerset and Cabell oils, is that correct?

A. Yes sir.

Q. I will ask you to look at Plaintiff's Exhibit 54 filed with your testimony, as there are one or two items thereon which I want to try to understand more clearly possibly. Under the first group of items entitled "receipts" I notice "net runs from wells 6,158,121.93 barrels." What is the significance of the word "net" in connection with that statement?

A. Net means the 98 per cent. that was credited to purchasers.

Q. That item added to the preceding items in the same group makes your total receipts for the period in question 8,988,455.30 barrels?

A. Yes.

Q. The next group of items on this exhibit entitled "deliveries" aggregate 9,084,460.39 barrels, and there is apparently treated as a delivery for the purpose of this exhibit the item "fluid loss
1195 for the year 24,637.42." By subtracting the receipts as shown on this exhibit from the deliveries as shown thereon it shows

a purported decrease in stocks of 120,642.51. And by subtracting this decrease in stock from the stock on hand June 30th, 1918, the exhibit gives the figures 707,535.43 barrels. This would apparently indicate that that balance of good oil was then on hand, would it not?

Mr. Crawford: You mean 707,535.43?
Mr. Mathews: Yes.

A. This does not represent the good oil, this 707,535.43.

Q. I understand that by taking this exhibit in connection with Exhibit No. 59 I can arrive at different figures and I want your explanation of what on the face of Plaintiff's Exhibit No. 54 the item 707,535.43 barrels was intended to represent.

A. It is intended to represent the gross stocks in the tanks and in the pipes other than the gravity system.

Q. Then in order to determine what stock was actually on hand June 30th, 1919, you would have to do two things as I understand it, for neither of which the record provides the necessary data, namely, you would first have to ascertain and add to your total the oil which was actually at the time in question in the gravity lines; and second, you would have to ascertain and subtract from
1196 that total the actual amount of sediment and water in your system at such date; isn't this statement correct?

Mr. Crawford: I object to that part of the question which assumes that there is no data for the amount of sediment and water in the system.

Mr. Mathews: To what testimony do you refer except as of the 1st of September, 1918 and the 1st of September, 1919?

Mr. Crawford: There are legal inferences to be drawn from that fact.

Mr. Mathews: The irresistible inference to be drawn is that at intermediate dates the amount of such sediment did not correspond.

Mr. Crawford: I think not, sir, because the amount of gross stock has nothing to do as I understand it with the amount of sediment and water. You may have a foot of worthless material in the bottom of a tank and you may fill the tank or half fill the tank, and the amount of sediment or water or whatever it is, worthless material, will be the same. I don't understand that the variation in the column of gross stocks has anything to do with the sediment and water.

Mr. Mathews: The sediment purports under the evidence
1197 to be ascertained by actual inspection and maintenance.

Mr. Crawford: Yes.

Mr. Mathews: And should not be a guess, and yet it is apparent from the testimony of the witness that in all these exhibits it is carried through as if it remained exactly the same from September 1st, 1918, to the last days of August, 1919. I will ask the witness if he can answer my question and if he wishes the stenographer will read it again.

"Q. Then in order to determine what stock was actually on hand June 30th, 1919, you would have to do two things as I understand it, for neither of which the record provides the necessary data, namely, you would first have to ascertain and add to your total the oil which was actually at the time in question in the gravity lines; and second, you would have to ascertain and subtract from that total the actual amount of sediment and water in your system at such date; isn't this statement correct?"

A. We have no record of course of any oil in the gravity lines and don't know how much there is in the gravity lines, and we carry the sediment and water as one amount for the whole year, and we realize that there would be changes from month to month.

Q. Doesn't my question correctly state what you would
1198 be obliged to do if you were to undertake to tell the court how much oil was actually in your lines June 30th, 1918, or any other date? Would you not have to do the two things which I have embodied in my question?

A. That would be true if we considered oil in the gravity lines.

Q. Well, I want to ascertain whether you assented or dissented to the necessity for following the method stated in my question, if you were to undertake to give the actual amount of oil in your system which includes gravity lines?

A. That would be true if we had to consider any oil in our gravity lines.

Q. Precisely on that point I have not ever understood and do not now understand, unfortunately, why it is true as you have several times stated that you do not consider oil in the gravity lines and cannot ascertain and give the amounts in such gravity lines at any given date. I understand from the testimony of Mr. Towl and others that you become responsible for, and are charged with the oil gauged and measured at the time it goes out of the customer's tanks and into the gravity lines. Now if that is true why don't you have the records showing the amounts that have gone into the gravity lines?

Mr. Crawford: I cannot prevent you from pursuing this
1199 line, but I propose to call Mr. Kenney on that point and also Mr. Towl, both of whom have practical knowledge, whereas this witness simply has knowledge of the books and records. I think you ought to ask him at any rate whether he knows that and whether that comes within his purview.

Mr. Mathews: As you like. I am willing for the witness to state if he does not know, I am not trying to trap him or embarrass him,—far from it. I will ask to have the question repeated.

Q. Precisely on that point I have not ever understood and do not now understand, unfortunately, why it is true as you have several times stated that you do not consider oil in the gravity lines and cannot ascertain and give the amounts in such gravity lines at any given date. I understand from the testimony of Mr. Towl and others that you become responsible for, and are charged with the oil

gauged and measured at the time it goes out of the customer's tanks and into the gravity lines. Now if that is true why don't you have the records showing the amounts that have gone into the gravity lines,—that they are in such lines at any given date?

A. All that I can say is that it has never been done in my experience in the pipe line business, and I wouldn't know how
1200 much oil would be in the gravity lines, and I could not give a guess.

Q. There is a particular record made that shows from the customer's tanks according to the guage the amount that is brought from such tanks and goes into the gravity lines, is there not?

Mr. Crawford: Does this witness know? He is not a field man?
Mr. Mathews: I don't know whether he is or not.
Mr. Avis: We cannot find out unless he answers it.

A. I don't believe I could answer that. I don't know.

1201 Mr. Mathews: Acting on the suggestion of counsel, and the statement that other witnesses will be on the stand who have personal knowledge of this matter, I will not ask you further on that line.

Mr. Crawford: That is all right; I will produce them and examine them on that point.

By Mr. Mathews:

Q. I will ask you to look at Exhibit 54 again. Under the item "Analysis of Fluid Loss," there appears the item "Accidents," 9,619.16 barrels. I take it that covers loss by accident during the period in question?

A. Yes, sir.

Q. And in that item would be losses from all unavoidable causes, would there not?

A. I believe that is the case, yes, sir.

Q. Does this item represent or purport to represent all of the losses by accident to all of the oils in your system during the period in question?

A. All of the Pennsylvania Grade Oil, yes, sir.

Q. Of all of your customers?

A. Out of our stocks that we handle of Pennsylvania Grade Oil, yes, sir.

Q. Well, loss by accident and unavoidable causes, as a matter of fact, is not borne by the Eureka Pipe Line Company,
1202 is it?

A. It comes out of the general surplus, yes, sir.

Q. Out of the Eureka Pipe Line Company's general surplus?

A. Yes, sir.

Q. Is not that contrary to the printed rules of the Eureka Pipe Line Company applicable to loss by accident, if you know?

A. I don't know. It has never been used that way.

Q. By General Stock—Did you say general surplus or general stock?

A. Well, it is a loss out of the general stock of the Eureka Pipe Line Company, of course, but the accident would be charged against the surplus of the Eureka Pipe Line Company.

Q. I want to hand you three papers, and will ask you to identify them by marking them "Division Order," "Transfer Order" and "Purchase Order." I will ask you to examine them and state what they are?

A. That is the division order, that the transfer order and that the purchase order (Indicating).

Q. They are the official forms adopted by and used by the Eureka Pipe Line Company, are they not?

A. Yes, sir.

Q. I call your attention to the item found on the division order numbered "Fourth," which in substance and probably with
1203 literal accuracy is also found on the transfer order, and after you have examined the fourth paragraph I want to ask you why, under that regulation, you have charged on Exhibit No. 54 apparently the entire loss by accident during the period to the Eureaka Pipe Line Company?

A. I could not say, except that the accident was not caused from fire. It was from leaks, I presume, and on that order. I could not answer positively.

Mr. Mathews: I cannot compel you to file the papers which I have handed you, as exhibits, but I will now request that you do so.

Mr. Crawford: You have no right to make that request of a witness, Mr. Mathews. Do you make that request of me?

Mr. Mathews: Yes.

Mr. Crawford: I decline. If you want to place them in evidence, you may.

Mr. Avis: Well, I am going to. In view of counsel's declining to permit the witness to file the papers as exhibits, they are here offered in evidence by the defendants, with the request that they be marked as above indicated.

(The three papers were marked. Defendants' Exhibits Division Order, Transfer Order and Purchase Order respectively.)

Q. Passing from that, I will ask you why you have de-
1204 ducted under the title "Fluid Loss for year," 24,637.42 barrels on Exhibit 54, when Exhibit No. 59, under "Sediment and Water," would clearly seem to embrace, some, if not all, of the items set out on Exhibit No. 54 as losses?

A. Exhibit No. 59 only shows the balances in those different accounts at the end of those months, after these losses have been accounted for.

Q. But Exhibit 59, as I understand it, would seem to deduct the whole amount of sediment and water at any date given thereon, and I do not understand, if this is correct, why it should first have been deducted in the way that it is on Exhibit No. 54.

Mr. Crawford: I object to that question, as it is making a quite unwarranted assumption. There is no such evidence, no such testimony.

Mr. Mathews: I am not referring to any testimony. I am reading from the exhibits, and asking what he knows——

Mr. Crawford: It is not the fact. You say that two things are identical; I say they are not identical. Now there you are.

Mr. Mathews: I have not said they are identical.

Mr. Crawford: Pardon me, your question assumes that they are identical.

Mr. Mathews: I said that some of them appeared to be in-
1205 cluded, if not all, under the heading "Sediment and Water."

And in making that statement I refer particularly to the item under Losses on Exhibit No. 54, entitled "Water Drawn."

Mr. Crawford: Now what is the question?

(The pending question was read.)

A. Exhibit No. 59 does not show anything except the balances, and has no more to do except showing the balances. The Exhibit No. 54, the Fluid Loss, takes in all the items of loss during the year, and after those items of loss have been taken into consideration that is the net result, those balances shown on Exhibit 59.

Q. After deducting the 24,637.42 barrels, Exhibit No. 54 shows the stock as of June 30th to be 707,535.43 barrels. Examining Exhibit No. 59, under date of June 30, 1919. I find exactly the same figures, to wit, 707,535.43 barrels, listed as the gross stock; and yet I understand that you would arrive at the actual amount on hand at that date by subtracting from the 707,535.43 barrels the amount of sediment and water ascertained to have been in your lines on the first day of the preceding September, to wit, 97,070.58 barrels. Do I understand this exhibit correctly or not?

A. If I understand your question rightly, the 707,535.43 includes the amount of sediment and water of 97,070.58. It is all included in that amount.

1206 Q. That is the way I understand it.

A. Well, that is correct.

Q. Then Exhibit No. 54 should not be construed as indicating that on June 30, 1919, your company had on hand in stocks 707,535.43 barrels?

Mr. Crawford: Of what?

Mr. Mathews: Oil.

A. That is the gross stocks of fluid, gross stocks in our tanks and pipes, other than the gravity lines.

Q. Including in round numbers nearly 100,000 barrels, estimated, of sediment and water?

A. Yes, sir.

Adjourned to Thursday, January 8, 1920, at 10 o'clock A. M.

Last Plaintiff's Exhibit No. 66.

1207 THE EUREKA PIPE LINE CO.

VS.

WALKER S. HALLANAN et als.

New York, January 8, 1920.

Met pursuant to adjournment.

Appearances:

For the plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.
For the defendants: W. Gordon Mathews.

VERNON S. SWISHER resumed the stand.

Cross-examination.

Continued by Mr. Mathews:

Q. Mr. Swisher, are you able this morning to give the names of the officers of the Prairie Pipe Line Company other than those given by you on yesterday?
A. Yes, sir.
Q. Please do so?
A. The Secretary is F. M. Wilhelm. All of the names including Mr. Wilhelm are directors, and also in addition George Coyle of Tulsa, Oklahoma, is a director.

1208 Q. Mr. Swisher, I want to ask you to again refer to Plaintiff's Exhibits Nos. 54 and 59 filed with your testimony on yesterday, and directing your attention to Plaintiff's Exhibit 54, to the item shown thereon under the head of "Losses, Water Drawn, 12,945.73 barrels." I wish to ask you if it is not a fact that this number of barrels of oil was originally included in and formed a part of either the 80,652.17 barrels or the 97,070.58 barrels shown on Plaintiff's Exhibit 59 in the column entitled "Sediment and Water"?
A. Not necessarily, as there is a certain amount of water coming in with the oil all of the time. Plaintiff's Exhibit No. 59 is a trial balance and shows the balances in sediment and water after taking into consideration that water drawn.

Mr. Crawford: You mean the item "Water Drawn"?
The witness: Yes, sir.

Q. After "taking into consideration" how and in what manner?
A. The water is usually drawn I believe a few weeks before the inspection. They try to draw off as much of the worthless, I believe, as they can from the tanks and after that they take an inspection of the tanks to see what remains in the tanks.

Q. Do you mean that there was actually then in the lines of
1209 your company during the period in question 97,070.58 barrels? And in addition to that some 12,945.73 barrels?

A. At that time? No, sir. The 97,070.58 barrels was the total amount of sediment and water on June 30, 1919, after that water had been drawn.

Q. I understood that the inventory related only to September 1st, not to June 30th?

A. Well, this water drawn was very likely some time before September 1st, a few weeks.

Mr. Crawford: You meant September 1st, didn't you, instead of June 30th? You said the inventory taken on June 30th.

The Witness: I meant September 1st. I was figuring a balance. Of course that is taken down every September all the way through.

Q. Do you mean that it was possibly drawn before September 1st, 1918?

A. 1918, yes, sir.

Q. If this water was drawn prior to September 1st, 1918, could it properly be charged on this Exhibit to 1919?

Mr. Crawford: It was not charged for 1919. It is charged to the year ending June 30th, 1919.

Q. It runs of course from July 1st, 1918 to June 30th, 1919, I understand?

A. Yes, sir, for that covers the period of the whole year,
1210 the losses.

Q. Isn't the effect of this to charge up as against the current revenues derived under the 2 per cent clause the water actually drawn prior to September 1st, 1918?

A. The water was very likely drawn prior to September 1st, 1918.

Q. Well, is the effect of this then to show that on the September 1st, 1918, the Eureka Pipe Line Company had in its system 97,000 barrels in round numbers of sediment and water after having drawn from out of its system 12,000 barrels in round numbers of water?

A. Yes, sir, that leaves the 97,000 of worthless matter.

Q. I want to ask you a preliminary question: Do you personally know by what method your company ascertains and determines the amount of water and sediment in its system at the time when a inventory is taken?

A. I could only answer I believe in a general way.

Q. Is there any witness present at this hearing within whose purview that knowledge lies who can testify to it?

A. I believe Mr. Towl can likely answer that better than any one else.

Q. Do you know the manner in which your company arrived at the shrinkage in the Cabell Oil handled by it during the period in question and shown on Plaintiff's Exhibit No. 56?

1211 A. Not very well.

Q. That Exhibit shows about 10,000 barrels stock on hand at the commencement of the period in question and receipts of about

6,500 barrels from "net runs from wells," making approximately 16,500 barrels; and yet this exhibit gives the apparent shrinkage in this quantity of Cabell Oil during the year at 3,057.44 barrels. Is that correct?

A. That was what was reported.

Q. Isn't that a mere bookkeeping estimate?

A. I imagine it is to a large extent.

Mr. Mathews: I believe that is all. I may have omitted something or Captain Avis may want to ask him something, but that is all for the present.

Mr. Crawford: Before this witness leaves the stand I would like to know whether he has furnished all the information covered by the requests made by counsel for the State for information except where he has stated that the information could not be obtained?

Mr. Mathews: Frankly, I do not think so. He has filed some very elaborate schedules with his testimony which to my mind do not give either on their face the information called for, and if I understand them it cannot be figured or derived from these schedules.

Mr. Crawford: What particular point have you in mind?

1212 Mr. Mathews: Numerous particulars. I am not able at the moment to undertake to state them.

Mr. Crawford: I think you ought to let us know if you propose to rely upon them.

Mr. Mathews: No, the requests we thought and still think are simple both in their substance and in their language and call for the information which we hoped to obtain. As I just stated, I do not think that the testimony of this witness in connection with the exhibits filed by him gives that information.

Redirect examination.

By Mr. Crawford:

Q. Mr. Swisher, in preparing the various tables of statistics that you have produced since you have been on the stand at the present session, have you taken into account the requests for information that were made by counsel for the state to you when you were on the stand or in connection with your testimony?

A. Yes, sir, that is what I intended.

Q. Have you answered them either verbally or through these tables to the best of your ability?

A. Yes, sir, I have.

Q. And to the extent that the records of the company make it possible to answer them as far as you are able to tell?

1213 A. Yes, sir.

Q. Are you now willing to give any other information within your power in regard to the operations of the company which counsel for the State may ask for?

A. Yes, sir.

Mr. Crawford: That is all, Mr. Swisher.

By Mr. Mathews:

Q. I understand that your examination has been limited and your testimony is limited to the records of the Eureka Pipe Line Company and what appears on their face? That is all you have undertaken to testify to, is it not?

A. Yes, sir.

Q. And I understood counsel to object on yesterday to certain questions which either actually or apparently called for extraneous information as to the workage of the company on the ground. You did not and do not understake to testify as to those matters, do you?

A. No, sir.

(Witness excused, signature waived by consent of counsel.)

1214 JOHN J. KENNEY, a witness recalled on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct examination.

By Mr. Crawford:

Q. You are the same John J. Kenney who previously testified in this case, are you not?

A. Yes, sir.

Mr. Mathews: May I ask whether you contemplate any extensive examination of Mr. Kenney at this time?

Mr. Crawford: I am going to ask him a number of questions covering the same general ground that Mr. Swisher has covered, but from the standpoint of a field man who has practical knowledge. If you will pardon me for saying so, the course of your cross-examination has been such as to make it necessary for us to do it. I do not for a moment dispute your right, but such is the fact, and I now recall Mr. Kenney for the purpose of proving as I say by a practical man. He has furnished, as Mr. Swisher said, most of the data to Mr. Swisher from which these tables were constructed.

Mr. Mathews: Captain Avis is apt to be here any moment now, and inasmuch as the former examination of Mr. Kenney occurred while he was here, and as Captain Avis cross examined him, I prefer to wait a few minutes.

Mr. Crawford: Certainly.

(After a short intermission, Mr. Avis appeared at 11:30 a. m.)

1215 By Mr. Crawford:

Q. Mr. Kenney, one of the requests for information made by counsel for the State of West Virginia was as to the capacity of the gravity lines of your company. I show you a table and ask you whether this table was prepared by your direction and from data furnished by your department?

A. Yes, sir, this paper was prepared in my office from data furnished by the superintendents in the field.

Q. Who are under you, are they?

A. No, they are not under my jurisdiction.

Q. Well, you have no doubt this table is correct?

A. Yes, sir, that is a correct approximation, insofar as it can be made.

Mr. Crawford: I offer this table in evidence and ask that it be marked Plaintiff's Exhibit 67.

The table was marked Plaintiff's Exhibit 67 of this date.

1216 Q. According to this Plaintiff's Exhibit 67 the total capacity of the gavity lines, if entirely filled, would be 134,425 barrels. I correctly interpret the exhibit, do I?

A. Yes, sir, you do.

Q. And that is what you understand to be the capacity?

A. Yes, sir.

Q. A number of questions have been asked about the amount of oil in the gravity lines, and whether is was included in any inventory that you take, and if not, why not. Let me ask you first, what is the fact. Do you in taking an inventory of oil on hand on any given date take into account the oil in the gravity lines?

A. No, sir, we do not.

Q. Never?

A. Never.

Q. Why not?

A. We have no way of determining any amount that may stand in the gravity lines, and we suppose that the oil runs into
1217 our stations during the 24 hours, less any shortage or evaporation that might take place. Our day begins at 7 a. m. and ends at 7 a. m., for the 24 hours. For instance, the day of to-day, January 8th, commenced at 7 a. m. this morning and will end at 7 a. m. tomorrow, January 9th. Therefore the oil run from the wells to-day has 24 hours to reach our local stations, and we assume that all of that oil has left the gravity lines and reached our tanks; all of it that will do so.

Q. Well, is there any way of demonstrating that?

A. There is not.

Q. The only way to determine it would be to tear the pipes up out of the ground, would it not?

A. That would be the only way.

Q. What is meant by a gravity line, Mr. Kenney?

A. A gravity line is a line in which the oil flows through without being pumped, without the putting of pressure back of the oil.

Q. Where do those gravity lines exist, between what points?

A. The gravity lines exist between the producers' wells or tanks and our local field stations.

Q. Between your first receiving tanks, would that be correct?

A. Yes, between our first receiving tanks.

Q. And the producers' tanks?

1218 A. And the producers' tanks.

Q. What is the reason why you do not have to pump through those lines?

A. The lines are so laid that the oil runs through by gravity. However, that is assisted by the use of suction pumps on those different gravity lines, and what oil does not naturally flow through by gravity is assisted through by putting a vacuum on the lines, and bringing the remainder of the oil to the first station.

Q. When you said that there were no pumps used, you meant, I suppose, no force pumps?

A. No force pumps back of the oil.

Q. Yes. And of course, it may seem simple, but still to make it perfectly clear, the reason these lines operate by gravity is because they are running down hill, is it not, substantially?

A. That is the reason, yes, sir.

Q. I notice that the bulk of the mileage of these gravity lines, as shown on Exhibit No. 67, rather more than two thirds of the whole I judge, is in two inch pipe; is that so?

A. Yes, sir; two inch pipe predominates.

Q. How are those gravity lines laid, particularly the two inch pipe, with reference to the surface of the ground?

A. They are laid from the producers' tanks over and above

1219 the surface of the ground to our first station.

Q. You mean they are laid on the ground, not buried?

A. No, they are laid on the ground; not buried.

Q. Well, then, is it the fact that they follow the inequalities of the ground?

A. Yes, sir, they follow the inequalities of the ground.

Q. How do you get them across a running stream?

A. They are lowered, so that they will be at the bottom of the stream, in order that nothing will interfere with the lines, or that the lines will not interfere with any other matters.

Q. You mean the bottom; the bed of the stream; is that what you mean?

A. Yes, sir.

Q. What distances do these lines extend, I mean, give me some limits of the length of these gravity lines?

A. The distances vary. The distance is anywhere from possibly a few hundred feet to, in some instances, fifteen miles.

Q. I direct your attention now to Plaintiff's Exhibit 54. Mr. Swisher testified that this table, and various other tables, which he presented, were prepared from data received from your office. That is the fact, is it not?

A. Yes, sir.

1220 Q. I call your attention first, on Exhibit 54, under the head of "Analysis of Fluid Loss", to the item of "Accidents", and I also show you Defendants' Exhibit Transfer Order and Defendants' Exhibit Division Order, in each of which there is a paragraph numbered Fourth, reading as follows:

"Fourth. The Eureka Pipe Line Company shall not in any event be liable for loss of petroleum resulting from lightning, fire, storms or other unavoidable causes and such loss shall be charged pro rata upon all petroleum in its custody at the time of such loss, and transportation and all accrued storage charges shall be paid on the amount so deducted."

I ask you whether it is the practice of the Eureka Pipe Line Company to enforce that paragraph against shippers or consignees.

Mr. Mathews: If the witness knows of his own knowledge.
Mr. Crawford: If the witness knows. If you know?

A. The Eureka Pipe Line Company has never enforced that paragraph.
Q. Now will you state what is meant by the item of "Accidents 9,619.16", on Exhibit 54; what are the accidents referred to?
A. They are accidents that occur in the ordinary course of business to our various pipe lines, or pipes.
Q. Well, now, Exhibit 54, is confined, as you see by the caption, to Pennsylvania Grade Oil, and for the period of twelve
1221 months ending June 30, 1919. This item relates, does it, to accidents affecting that grade of oil and occurring during that period?
A. Yes, sir, it does.
Q. Can you specify more clearly what kind of accidents would be included under that head?

Mr. Avis: If he knows.
Mr. Mathews: I would like to understand whether, along this line, the witness is purporting to give the information derived from book entries and records of his office, or whether as to this question as to accidents he is purporting or will purport to state of his own knowledge what the accident was, and where it was. Which way are you testifying, Mr. Kenney?
The Witness: The accidents are reported to my office. I do not have intimate knowledge of each particular accident.

Q. Are these reported to you in the regular course of business?
A. Yes, sir, we have a regular method of reporting these accidents daily, followed up by a general report at the end of each month covering the month.
Q. Who makes the reports to you?
A. The superintendents of the divisions.
Q. Those reports are made to you, are they?
A. They are made to me, yes, sir.
Q. And you make up the information and pass it on to
1222 Mr. Swisher's department?
A. Yes, we do.
Q. Now will you again state the general character of the accidents which are included under that heading?
A. They are accidents that occurred during that period, in the way of breaking of the lines or leaking. That is generally the

way all those accidents occur, by some breakage of the various lines.

Q. Of the pipes?

A. The pipes.

Q. But all resulting in a loss of oil?

A. Yes, sir.

Q. Now take the first item in that table, "Losses, Wells to Stations"; what does that mean?

A. That means the shortages or losses occurring between the producers' tanks and our first stations.

Q. Well, losses for shortages resulting from what, or how are they measured?

A. It is an actual shortage, due to expansion, and so forth; due to expansion while running the oil, which is a loss to us, and it is a shortage that occurs between the amount run from the producers' tanks and the amount received by us.

Q. Well, is there any loss by evaporation reflected in that item?

1223 A. There would be, yes, sir.

Q. Well, if there was any loss by evaporation, under which item would it be included?

A. Well, the evaporation that would take place in a producer's tank, after we opened the valve, turning the tank into our lines, would be a shortage to us, but which there would be no way of arriving at the exact amount of loss in that manner.

Q. But would it be included under this head?

A. Yes, it would be included.

Q. If there was any it would be included there?

A. Yes, sir.

Q. At any rate, this amount of 44,434.66 represents the losses between those points reported to you in the regular course of business?

A. Yes, sir.

Q. What about the item "Losses on Pumping"?

A. That is a loss that occurs in pumping the oil through our lines, being the difference between the amount pumped and the amount received, which is a shortage on account of pumping the oil through the pipes.

Q. Well, does it mean losses which take place in the course of pumping the oil through the system?

A. Yes, sir.

1224 Q. If there was any loss from evaporation during that period would it be reflected in that item?

A. There would be some additional——

Q. (Interposing.) No, I did not ask you whether there was some, but I say if there was any, would it be reflected in that item?

A. Yes, sir.

Q. It would be included in that item?

A. Yes, sir.

Q. What about the allowance to the Ohio Valley Refining Company, 125 barrels; what does that mean?

A. That is an amount of water and sediment that was delivered

to them during that period which was worthless, and for which we had to make an allowance.

Q. And did make an allowance?

A. And did make an allowance to that amount.

Q. The item of "Water Drawn, 12,945.73", what does that mean?

A. That means water drawn from our tanks during the period.

Q. You mean during the twelve months?

A. During the twelve months ending June 30th, 1919.

Q. How about the item of "Worthless, Thrown Away"; what does that mean?

1225 A. That is sediment that was drawn out of our tanks, and being entirely worthless was thrown away.

Q. Now do all of these items in this exhibit, which I have asked you about, with the amounts in barrels set opposite to them, represent the summary of the reports which have been made to you in the regular course of business?

A. Yes, sir, they do.

Q. And you have furnished the information then to Mr. Swisher?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit 55, entitled in part, "Oil Account, Corning Oil, for twelve months ending June 30, 1919", and I call your attention to two items under the heading of "Analysis of Fluid Loss", the item of "Losses on Pumpings", I suppose has the same general meaning as the same item in Exhibit 54, has it?

A. Yes, sir, it has.

Q. The next item, "Losses, Shrinkage, 1,746.15", will you please explain that?

A. The losses on shrinkage are due to a change in temperature which caused a shrinkage of that amount of oil.

Q. That is, the change in temperature made the total volume of oil contract. Is that the idea?

A. Yes, sir.

1226 Q. And the same is true, in general, wherever the word "Shrinkage" occurs, in similar tables introduced by Mr. Swisher?

A. Yes, sir.

Q. Now look at Plaintiff's Exhibit No. 57, entitled "Oil Account, Somerset Oil"; under the head of "Analysis of Fluid Loss," I see "Gains, Expansion, 3,247.87." What does that mean?

A. That is an expansion during that period. Part of this was what might be called a book entry. The Somerset and the Cabell Oils are consoliated; that is, they go together, as has been stated heretofore, and——

Q. (Interposing.) Well, now, pardon me a moment. I have not asked anything about Cabell Oil, Mr. Kenney.

A. Well, this is an expansion due to the same cause as before——

Q. You mean, the change of temperature?

A. Yes, sir.

Mr. Avis: Is not that explanation that he is now making a general explanation of what expansion is?

Mr. Crawford: That is all.

Mr. Avis: You asked him about that specific item, and the witness started to talk about that specific item, and now you stop him.

Mr. Crawford. Your question was directed to that item
1227 in regard to that particular sheet, and we insist upon the question being answered, not in the abstract, but as it applies to that item.

Mr. Crawford: I do not think that you have any right to make that insistence.

Mr. Avis: Yes, sir, the witness started to answer your question, and you interrupted him and did not let him complete it, and asked him an abstract question.

Mr. Crawford: Go on, Mr. Kenney. I did not ask him anything about Cabell Oil. However, go on if counsel insists. We will get it all. We will get at it all.

Q. (Question read:) "Now look at Plaintiff's Exhibit 57, entitled 'Oil Account, Somerset Oil'; under the head of 'Analysis of Fluid Loss,' I see 'Gains, Expansion, 3,247.87.' What does that mean?"

"A. That is an expansion during that period. Part of this was what might be called a book entry. The Somerset and the Cabell Oils are consolidated; that is, they go together, as has been stated heretofore, and——."

Q. Now go on and complete your answer. I will not question it further.

A. The Cabell Oil, according to our way of handling it, had never suffered any loss, and this was an adjustment between the Cabell and the Somerset Oils. The Cabell expansion or
1228 shrinkage rather, of 3,000 barrels was a Somerset expansion to that amount, and I made the entry. I believe at the time I had some consultation with the general shipping agent, but it was considered a proper entry to adjust the accounts of the two oils at that time.

Q. When was that, Mr. Kenney?

A. That was in April, May and June of 1919.

Q. Well, now, Mr. Kenney, in order that you may have all of these exhibits before you that seem to bear upon this subject, I ask you to keep in your hand Exhibit 57, and I will hand you also Plaintiff's Exhibit 56, which is headed, "Oil Account, Cabell Oil. For Twelve Months Ending June 30, 1919." Now I want to direct your attention again to this item of expansion on Exhibit 57, and I ask you what generally you mean by expansion in this connection; never mind this particular item now?

A. Yes. Expansion is due to a change in temperature, which changes the volume of the oil.

Q. Well, when you enter an item, so much for expansion, does that mean that just once for all it has expanded that much, or is that the net result of various shrinkages and expansions?

A. No, it is the result of expansion only.

Q. Well, shrinkage is a result of contraction?

1229 A. Yes, sir.

Q. Both due to changes in temperature?

A. Yes, sir.

Q. Very well. Now with Exhibits 56 and 57 before you, please explain what you meant by your previous answer; that is, go into it, give the figures and explain fully; and in this connection I call your attention to the fact that questions have been asked in regard to this item of shrinkage on Exhibit 56, 3,057.44 barrels?

A. The Cabell Oil has been going in with the Somerset Oil for a number of years and has never had charged to it any shortage. It was handled as having no loss, the loss having fallen on the larger volume of oil that was going in with that, the Somerset Oil, and the shortage naturally due to Cabell Oil was being made good by the Somerset Oil, and in order to adjust these two accounts the entry was made showing a Cabell shortage and a Somerset expansion of 3,000 barrels. The odd amount here, 57.44 barrels, shown in the Cabell report, is a natural expansion of its own.

Q. A natural what?

A. Is an expansion taken from the books as they stood.

Q. You do not mean expansion, do you?

A. I mean a shrinkage taken from the books as they stood. The entry that I speak of was——

1230 Q. What entry is that? You have spoken of a great many entries?

A. Yes, the entry that I speak of——

Q. Naming it, now?

A. The 3,000 barrels shrinkage of Cabell oil, was the book entry that I am referring to.

Q. Well, do you intend to testify that there was a loss by shrinkage of that 3,057.44 barrels, whether it was rightly denominated Cabell or Somerset?

A. Yes, sir, there was.

Mr. Avis: Did I understand the witness to say that 3,000 of it was a book entry and the other was actual?

The Witness: Yes, sir.

Mr. Crawford: Well, Mr. Kenney, your last two answers are quite inconsistent. Won't you please read the last two questions and answers to the witness. Mr. Kenney, please attend now; we want to get the facts.

(The last four questions and answers were read.)

Q. Now, Mr. Kenney, which do you mean to say?

A. The 3,000 barrels was an actual shrinkage of the two oils, whether rightly tabulated or not. The 57.44 barrels was an actual shrinkage.

Mr. Crawford: Read that answer.

(The last answer was read.)

1231 The Witness (continuing): Of Cabell Oil.

Q. Well, is the result of what you say, then, that the whole of the 3,057 barrels was actual shrinkage?

A. Yes, sir.

Q. Then what did you mean by telling Captain Avis a moment ago that it was a bookkeeping entry?

A. What I meant to infer was that the bookkeeping entry related to the 3,000 barrels in round numbers, that I have spoken about. The amount here shown as shrinkage is 3,057.44 barrels, making that the total, which was an actual shrinkage between the two oils.

Q. Well, now, then if 3,057 barrels was the actual shrinkage on the two oils, what do you mean by bookkeeping entry? Do you mean by that that this was a fictitious entry and did not mean a real shrinkage, or by using the words "bookkeeping entry," do you mean that you charged actual shrinkage upon Cabell Oil, although in fact it might have been properly chargeable as against the two together?

A. Yes, sir.

Q. That is what you mean?

A. That is what I mean.

Q. You do not mean to say by using the words "bookkeeping entry," that that is fictitious?

A. Not at all, no, sir.

1232 Q. Very well. Then I understand you to testify, however the entry is made, that there was an actual shrinkage as against these two oils of 3,057.44 barrels?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now let us go back to the entry of expansion on Exhibit 57, 3,247.87. Does that indicate an actual increase in the volume of the two oils?

A. Yes, sir, it does.

Q. That is, whether it is properly placed under Somerset or should properly be transferred to Cabell, or partly to one and partly to the other, there was an actual increase, was there, to that extent?

A. Yes, sir, there was.

Q. And in speaking of bookkeeping entries, you did not mean to say that that was a fictitious entry?

A. No, sir, I did not.

By Mr. Mathews:

Q. Do you mean that there was both an increase and a decrease during the period in question on the two oils?

A. There was——

Q. I should think there would be one or the other, but I do not understand the apparent existence of both.

1233 A. There was a general expansion between the two oils, including the two oils.

Q. Why do you have a shrinkage, then, if it actually expanded and increased?

A. That was to properly credit it to the oil it belonged to, the Somerset Oil.

By Mr. Crawford:

Q. Well, now, as a matter of fact, is not this, Mr. Kenney, the probable fact, that this item of shortage should be offset against the item of expansion, and one reduce the other?

A. Yes, sir.

Q. So that, reading the two together, would this be the net result, that there was a net expansion of about 190 barrels; that is, deducting the amount of this item of shrinkage from the item of expansion, which leaves about 190 barrels, that that is the net result of those two items?

Mr. Avis: Just a minute. We object to that question, because it assumes that that is true, while it would appear from the exhibits that one is actual and the other is just simply an arbitrary entry to cover a period of years.

Mr. Crawford: I do not think it so appears, counsel. However, I will stand by my question. I want to get the facts out. I do not want to distort it; on the contrary, I am willing to make large
1234 concessions.

A. Yes, sir, that would show an actual expansion between the two oils of about 190 barrels.

Mr. Avis: Mr. Crawford, do you object to my asking a question there for information?

Mr. Crawford: No, go ahead.

Mr. Avis: I must confess that that is not clear to me.

Mr. Crawford: Go ahead.

By Mr. Avis:

Q. Look at Exhibit 56 again. Mr. Kenney, you do not mean to say that your records showed, insofar as Exhibit 56 is concerned, relating to Cabell Oil, that there was a shrinkage of 3,057.44 barrels, do you?

A. Yes, our records show that.

Q. Yes, but it was a fictitious entry, was it not, on your records?

A. The entry was made to adjust an actual shrinkage between the two oils.

Q. Extending over how many years?

A. Extending over a period of about six years.

Q. Now you show on Exhibit 57 an expansion of 3,247.87 barrels. Over what period does that extend?

A. That extends over the period of twelve months ending June 30, 1919.

1235 Q. Then that is actual, is it; it is not a fictitious entry or an adjustment?

A. That is actual, taking into consideration the adjustment that I spoke of.

Q. Well, do your records show any shrinkage whatever for the twelve months ended June 30, 1919, of Somerset Oil, I mean, actually?

A. No, sir.

Q. Then there was not any actual shrinkage of Somerset Oil during that period, was there?

A. No, sir, there was an actual gain between the two oils in expansion, of about 190 barrels.

Q. Not during that twelve months?

A. Yes, sir, during the twelve months.

Mr. Avis: Very well, I will develop it further on cross examination.

By Mr. Crawford:

Q. I show you Plaintiff's Exhibit 58, "Oil Account, Mid-Continent Oil for twelve months ending June 30, 1919," and direct your attention there to the items under "Analysis of Fluid Loss." The first is "Gains, Water Received." What is meant by that entry? First tell me what do you mean in your accounts by the words "water received," without reference to this particular use of the words?

A. Water is received from feeder lines and from other larger lines, pumping lines, or discharge lines.

1236 Q. Now, when received it tends to increase the bulk of your stock of oil, does it?

A. Yes, sir.

Q. In the same table the words, "Losses, Pumpings," I suppose have the same meaning as that which you have testified to before; I think the words you used before was "On Pumpings"?

A. Yes, sir.

Q. And shrinkage, does that mean loss from change of temperature?

A. Yes, sir, it does.

Q. To which you have testified?

A. Yes, sir.

Q. Mr. Kenney, request was made in regard to capacity of tankage of your company. The first request was as follows, Request No. 1, page 959: (*a*) The exact storage capacity of the tankage of your company at Morgantown; (*b*) The exact storage capacity of your company in tankage in West Virginia, elsewhere than at Morgantown; and (*c*) The amount of your tankage at Morgantown used solely for the several grades of oil, namely, the amount of tankage devoted entirely to Mid-Continent Oil, the amount of tankage devoted entirely to Corning Oil and the amount of tankage devoted entirely to Somerset-Cabell Oil at Morgantown. Now I hand

1237 you a table that has been prepared, as I understand, on data furnished by you. Is it the fact that the data for it came from your office?

A. Yes, sir.

Q. And does this table correctly state the facts set forth in it?

A. Yes, sir, it does.

Mr. Crawford: I offer this in evidence and ask that it be marked Plaintiff's Exhibit 68.

The table was marked Plaintiff's Exhibit 68 on this date.

1238 #Tanks 107, 108 and 150 were used in handling Corning Oil until November 12, 1918, when they were cleaned out. Now used in handling Mid-Continent Oil—capacity 51,774.42 bbls.

##Tanks 198 and 199 at Morgantown were used for Mid-Continent Oil up to December 1, 1918. Then cleaned out and put in use handling Corning Oil—capacity 70,000.00 bbls.

*Tank 213 at Elm Run was used in handling Penna. Grade Oil up to April 13, 1919, when it was cleaned and later used in handling Somerset Oil—capacity 31,228.40 bbls.

Mr. Crawford: That is all. You may cross examine.

Cross-examination.

By Mr. Avis:

Q. On this last Exhibit, 68, Mr. Kenney, I note the words, "Iron Tankage." Have you other tankage besides iron tankage used for storing oil?

Mr. Crawford: I object to the question, because there is no testimony, and especially nothing in this Exhibit, that says anything about storing oil.

1239 A. We have some small wooden tanks at our local field stations.

Q. Our request was not for iron tankage, was it; it was for your total tankage, was it not?

A. We consider our iron tankage our general main tankage.

Q. Well, what is the capacity of your wooden tankage?

A. It approximates 50,000 barrels.

Q. It seems that I have used the words "storage capacity of your tankage" in my request and in various questions. By this Exhibit 68 you mean the capacity of the tankage if used for storage, do you not?

A. I mean the full capacity of the tankage.

Q. And that is true when you say that your wooden tankage is approximately 50,000 barrels?

A. Yes, sir.

Q. Now I wish you would turn to Exhibit 54 under the head of "Analysis of Fluid Loss." Under that heading there is a subheading, "Losses," under which there are six items. By those losses you mean to cover all losses of the company whether due to natural and ordinary causes, negligence, or what not, do you not?

A. These items cover all losses.

Q. Yes. And if due to the negligence of your company
1240 or some of its agents or employees, they are carried as a loss, are they not?

Mr. Crawford: I object to that as immaterial and irrelevant.

A. Yes, sir, it is loss from all causes.

Q. And you cannot tell from your books, nor do you know of your own knowledge which of your losses shown on any of these exhibits were due to negligence, can you?

A. We have no losses due to negligence.

Q. Mr. Kenney, do you mean that, that your company is so perfect in its workings that none of your employees caused a loss by their negligence?

Mr. Crawford: I object to that as immaterial. This objection is continued to all this line.

A. The losses, if any, due to that cause would be extremely slight.

Q. But your answer was that there were none?

A. Well, I will qualify it to the extent of my last answer.

Q. I note on some of your exhibits under the head of "Gains," that you show profits from expansion, but on the greater number of your exhibits, you show, as I understand them or analyze them, a greater loss from shrinkage than your profits from expansion. Is not that true?

1241 Mr. Crawford: I think you should show him the exhibits.

Mr. Avis: Well, I am referring to the exhibits about which you questioned him, the four exhibits, numbers 54, 55, 56 and 57, and the exhibit which is an analysis of those exhibits.

Mr. Crawford: 58.

Mr. Avis: And 58, yes.

A. The amount following "Expansion" on Exhibit 54 shows 244.04 barrels expansion.

Q. I do not want you to read them; just generally, my question was.

A. Well, I could not assent to that question without looking it over.

Q. I just thought if you would look them over and make one general answer, it would save space in the record.

Mr. Crawford: You had better read the question.

Q. (Read: "I note on some of your exhibits, under the head of 'Gains' that you show profits from expansion, but on the greater number of your exhibits you show, as I understand them or analyze them, a greater loss from shrinkage than your profit from expansion. Is not that true?")

A. Yes, sir, there is a greater loss from shrinkage.

Q. Now, turning to Exhibit 54 again, why is that a loss, the item appearing under the legend, "Water drawn"?

A. Because it is water received as oil, and we have to draw

1242 it off as worthless, because it is water.

Q. Well, now, in passing it on to your connecting carriers, do you not all have some profit from what appears to be losses on the exhibits about which I am questioning you?

A. We are not permitted to pass water or sediment on to our connecting carriers.

Q. Well, is the Cumberland Pipe Line permitted to pass water on to you?

A. Not if we can help it.

Q. Well, if they should, then you draw the water and treat it as a loss, do you not?

A. We would have to do so, yes, sir.

Q. Now, if you would pass oil on to the Southern Pipe Line Company with water in it, they would have to draw that water; it would be a loss to them, would it not?

A. Yes, sir.

Q. Is there no adjustment between these companies as to some of these items, such as water drawn, or "worthless thrown away," or "losses on pumpings," or "losses on wells to stations"?

A. No, sir, there is very little water passed from one connecting carrier to another, because they sample the oils that they are pumping closely, every hour, and they at once detect anything
1243 but good oil.

Q. Well, on Exhibit 57, under the same heading, "Analysis of Fluid Loss," referring to Somerset oil, I notice the legend, "Water Received, 6,146.99 barrels." From whom was that water received?

A. That was water——

Q. Now catch my question, Mr. Kenney; the question was, from whom was that water received?

A. It was not received from the Cumberland Pipe Line Company.

Q. You receive all of your Somerset oil from the Cumberland Pipe Line Company, do you not?

A. Yes, sir.

Q. Well, then, are not the words "Water Received" a misnomer?

A. No, that is speaking of our Somerset oil. We had some water received, and that is due to our repairing of lines.

Q. Well, how due to your repairing of lines?

A. We have to pump water to repair lines during the summer.

Q. Well, then you put that water into the oil, did you not, or behind the oil, did you not?

A. I am mistaken in my first answer to your question. I thought it referred to another matter. The water received, as shown
1244 in Exhibit 57, was water received during the year in the Somerset oil coming from the Cumberland Pipe Line Company.

Q. Was that not adjusted between your company and the Cumberland Pipe Line Company in some manner?

A. No, sir.

Q. There was never any adjustment made between these companies on any of the losses appearing on the exhibits that I have referred to, that is not shown on these exhibits, was there?

A. There was no adjustment made of this item of water received from the Cumberland Pipe Line Company.

Q. That is not my question. What about the other items, under the head of "Analysis of Fluid Loss"?

A. What items do you refer to?

Q. Any or all, any and all of the "Analysis of Fluid Loss" appearing on Exhibits 54, 55, 56, 57 and 58, and the exhibit which purports to be a summary of these exhibits?

Mr. Crawford: I think, Counsel, Exhibit 54 covers Pennsylvania grade oil, a very large part of which comes from the State of West Virginia.

Mr. Avis: I understand, but I am asking whether there has been any adjustment between the companies on any of those items.

A. There is no water——

1245 Mr. Crawford: Now, Mr. Kenney, answer the question. Time is very valuable here.

Q. (Read.)

A. There was no adjustment of any other items not shown on these exhibits.

Q. Do you not sometimes gain when you deliver oil, for instance, to the Southern Pipe Line Company, that has been expanded?

A. Expanded?

Q. Yes, by temperature or otherwise?

A. No, we gain nothing by that. We have to gauge our tank when it is turned on. If any expansion or shrinkage has taken place between the time the tank is used the day before, and the time we turn it on into the lines that connect with our connecting carrier, we find the expansion or shrinkage, and if it is expansion we would gain it, if shrinkage we would lose it.

Q. Now, as to the item "Water Received" appearing on Exhibit 57, you stated that there had been no adjustment betweeen your company and the Cumberland Pipe Line Company. There will be an adjustment of that, will there not?

A. No, sir.

Q. And there never has been any adjustment between any of these companies, namely, the Cumberland and the Southern Pipe Line Company, and your company about any of these items that appear under the head of "Analysis of Fluid Loss" on the

1246 exhibits that I have referred to?

A. No, sir, there has not.

Q. You have been able to state that the item "Water Received" appearing on Exhibit 57 was received from the Cumberland Pipe Line Company. Why would not your company require them to adjust that with you?

A. That was water received in small amounts from day to day and the total as given in this Exhibit 57 shows the result at the end of the year ending June 30, 1919.

Q. But at the prevailing prices of oil of that grade during that year, that item aggregated somewhere in the neighborhood of fifteen or twenty thousand dollars, did it not?

A. Yes, sir, it probably would.

Q. And yet no demand has been made upon that company for settlement for that water received, although you can trace it to that company?

A. Not that I know of, no, sir.

Q. Now, turning to Exhibit 54, under the same heading, "Analysis of Fluid Loss"; for instance under "Wells to Stations," how is that loss incurred?

A. That is incurred by waste and evaporation.

Q. And shrinkage?

A. Evaporation, shrinkage in the producers' tanks while we are taking the oil from them.

1247 Q. Well, but would you be chargeable with shrinkage in the producers' tanks?

A. It would be the shrinkage taking place during the time that we were taking the oil from that tank. Any decrease in the oil in the producers' tank would be charged to us.

Q. After what time, after you had guaged it?

A. Yes, we gauge a tank when we first turn it on, and the length of time that that tank will run out varies. Sometimes three or four hours, sometimes several hours.

Mr. Crawford: Mr. Towl testified, Captain Avis, about that quite in detail. You may not perhaps have read his testimony.

Mr. Avis: Yes. I do not recall it.

Mr. Crawford: He gave the scientific explanation of it.

Q. Well, why do you on some of these exhibits use the word "shrinkage" and on others you use the words "losses, wells to stations," and "losses on pumping," etc.? Does not the item of shrinkage enter into the other items?

A. They are separate items.

Q. Well, do not, for instance the "losses, wells to stations" include shrinkage?

A. It includes in the lines and producers' tanks, while we are taking the oil. "Shrinkage" shown on our statement indicates shrinkage or expansion in our tanks, that is, the company's tanks.

1248 Q. That is the distinction between Exhibit 64 and the exhibits relating to the other oils?

A. How is that?

Q. That is the distinction between the shrinkage referring to the Pennsylvania grade oil, and the other exhibits referring to the other grades of oil, is it not?

Mr. Crawford: He did not say that, Captain Avis.

Mr. Avis: I understood in substance that is what he meant. Perhaps I misunderstood him, but read that answer, please.

(The last answer was read.)

Q. I would like for Mr. Kenney to explain more clearly what he means?

A. What is the question now?

Q. In other words, I do not see on Exhibit 54, under the heads of "Analysis of Fluid Loss" the word "shrinkage," and I have asked you if certain of those items do not include shrinkage, and have asked for an explanation why you used the word "shrinkage" on

the exhibits referring to the grades of oil other than the Pennsylvania grade, and include shrinkage in some other heading on Exhibit 54?

A. There is no shrinkage shown on Exhibit 54. The net result for the year is expansion, amounting to 244.04 barrels.

Q. I see there is no such item under the head of "Losses" as shrinkage, but is there not actually some shrinkage of the
1249 Pennsylvania grade of oil that appears under some of those items under the head of "Losses"?

A. The expansion or shrinkage during the year is adjusted; it may be expansion one month or shrinkage another. We might have expansion of a thousand barrels during the summer and a shrinkage of a thousand barrels during the winter; that would leave neither shrinkage nor expansion.

Q. Then you put down simply the net result for the period?

A. Yes, sir.

Q. Then there is no such——

Mr. Crawford: Captain Avis, it seems to me the witness has testified previously what he meant by shrinkage and expansion. He gave an explanation of how he used those terms. That does not mean the same as loss, according to his testimony.

Mr. Avis: I understood him to say to you several times that by shrinkage he meant loss from evaporation.

Mr. Crawford: No, sir.

Mr. Avis: I heard you suggest to him two or three times——

Mr. Crawford: No, sir, you are mistaken.

Mr. Avis (continuing): Under those different losses, if some of it was not due to shrinkage or evaporation or something of that kind.

Mr. Crawford: No, sir, you are mistaken about that. I
1250 did not, sir. You will not find that.

Q. What is the cause of shrinkage?

A. A change in the temperature, reducing the volume of oil.

Q. Reducing it. There is a shrinkage of the Pennsylvania grade of oil as well as the other grades of oil, is there not, Mr. Kenney?

A. Yes, sir.

Q. Now, as I understand you, you have taken that into consideration in the preparation of Exhibit 54, but have given the net results as between shrinkage and expansion, is that correct?

A. Yes, sir.

Mr. Avis: Now we are clear on that, then.

Q. Now, "Losses, wells to stations," you did say that included shrinkage, did you not, in the producers' tanks?

A. That is a loss between the producers' tanks, and our first tank. It is due to shrinkage in the producers' tanks and evaporation.

Q. That is what I thought. Now then, none of the other items under the head of "Losses" on Exhibit 54, includes any shrinkage, does it?

A. No, sir.

Q. What is the cause of those losses from the wells to the stations, referring to Exhibit 54?

1251 A. It is due to evaporation.

Q. Anything else?

A. No, I know of no other cause.

Q. Now, what is the cause of your losses on pumpings, still referring to Exhibit 54?

A. It is a natural shortage that occurs in handling, in pumping oil, and is the result of pumping oil from one point to another. There is a shortage.

Q. Well, is that due to shrinkage or evaporation also?

A. It is possible, but the amount due to any cause of that kind would be impossible to arrive at.

Q. It must be due to some cause besides evaporation, is it not?

A. No, we consider the shortage in pumpings principally due to evaporation of the oil. You cannot handle oil without some evaporation.

Q. Well, what else besides evaporation, Mr. Kenney?

A. Well, there are liable to be many sorts of losses.

Q. There might be some negligence in pumping it, might there not?

A. There could be.

Q. There might be faulty connections, might there not?

A. There could be.

Q. That would cause a waste; and that is also true of your

1252 losses from wells to stations, is it not?

A. There could be leaks.

Q. Associate counsel advises me that his recollection of your testimony is, referring still to Exhibit 54, that you said that the word "accidents" covered leaks?

A. The word "accidents" refers to actual losses caused by leaks that we are advised of, yes, sir.

Q. Your gravity lines, that are laid above the ground as you have described in your examination in chief, are not constructed with the same degree of care that your other lines are, are they?

A. Gravity lines do not have the same permanency that our other lines have, therefore they are constructed less permanetly than our other lines.

Q. And your losses are greater on your gravity lines than they are in your other lines; that is, in so far as evaporation, shrinkage, etc. is concerned, is that not true, leakage?

A. I cannot answer that question; that is, I do not know the amount of compartive losses between the gravity lines, and our other lines.

Q. As a matter of fact, your gravity lines are nearly seventy per cent of all your lines, are they not?

Mr. Crawford: Seventy per cent in what way, mileage, or capacity, or what?

1253 Mr. Avis: Mileage. Seventy per cent of your total system in mileage?

A. Approximately so, yes, sir.
Mr. Avis: Will you permit Mr. Mathews to ask a question?
Mr. Crawford: Oh, certainly.

By Mr. Mathews:

Q. Mr. Kenney, you have testified that the losses known to be due to leakage are entered on the books of your company under the head of "Accidents", and so shown on this Exhibit 54. Therefore, I want to ask you, disregarding losses due to leakage, what else, if anything, except evaporation, causes losses in the oil to occur either while it is in the lines from the customers' wells or in the pipes of your company, or in pumping or while it is in tanks?

Mr. Crawford: You mean to ask, what there is outside of evaporation and leakage, known leakage, that is what you mean?
Mr. Mathews: Yes.

A. Outside of leakage, evaporation is the main loss.
Q. Is it not the only loss?
A. No, I would not say that.
Q. Well, what else?
A. Evaporation is the only other loss than I can recall at the moment.

1254 Q. Well, I want you to take time and think, and if you can think of any other cause that occasions loss to the oils, while they are on their way from the customers' wells, while they are in your pipe lines, while they are in your tanks, or while they are being pumped, except evaporation and leakage, which is under a different head, I want you to state it?
A. Well, we have such a loss as is indicated there in an allowance, in delivering oil to a refinery, where we deliver them worthless matter such as sediment or water, and we have to make an allowance for the full amount.
Q. But I am talking about actual loss of physical oil, and I want to know whether you attribute any such actual loss to any other cause except evaporation?

Mr. Crawford: He has testified to other causes here, Mr. Mathews.
Mr. Mathews: But he cannot tell what they are.

A. Outside of accidents, evaporation and shrinkage are the only losses that I know of.
Q. Well, is not shrinkage evaporation?
A. Well, I am using them both together.
Q. Well, I want to know, as you do use them do they not mean the same thing, and are they not synonymous, losses due to evaporation and losses due to shrinkage?
A. They are probably due to the same cause.
Q. Well, you are using the words; are you not using them as identical?

1255 A. When we use the word "shrinkage" it means a reduction in the volume of the oil.

Q. And when you use "evaporation"?
A. We use the word "expansion" when there is an increase in the volume of the oil.
Mr. Crawford: Due to what?
The Witness: Due to change in temperature.
Q. And when you use the word "evaporation", what?
A. That is a loss due to the temperature, I judge.
Q. And that is what shrinkage is, too?
A. Shrinkage is a loss due to temperature, yes, sir.
Q. I want to make this quite clear. If you, as a practical man on these questions, know of any cause to which you attribute losses in physical oil while it is on the way from the customers' wells or after it gets in your lines or tanks, or while it is being pumped by your company, anything else except evaporation, I want to ask you to state what such other cause or causes are?
A. Evaporation is the cause of one loss, and the receipt of waste matter, of course, is another cause.
Q. No, that is not a physical loss, is it?
A. No. Well, evaporation is the only physi- — that I can recall at the moment.

1256 Mr. Mathews: Well, I again say, I — take your time and put in the record if in your opinion there is any other cause.

Mr. Avis: At any time.
Mr. Mathews: And you may do so after the recess, if you please.
The Witness: I do not believe that there is any other cause.

Recess.

1257 Afternoon Session.

JOHN J. KENNEY resumed the stand.

Cross-examination.

Continued by Mr. Avis:

Q. Mr. Kenney, will you turn to "Analysis of fluid loss," the legend appearing upon Exhibit 54, and under the head of "Losses—Wells to Stations"; how were those losses entered up, Mr. Kenney, that appear under that head? Are they entered up in the books from time to time, daily or monthly, or are they entered up at the end of the year?
A. Daily.
Q. Now can you trace the losses that occur under that head?
A. We can trace on our books, yes, the amounts that go to make this sum.
Q. I am not referring to your books? Can you trace where the loss actually occurred in physical oil?
A. Yes, sir.
Q. As I understand you, that loss comes largely from the loss of

oil between the tanks of the producers and your first receiving tanks; that is correct, is it?

A. Yes, sir, it is.

Q. I understood you to state in your examination in chief this morning, that some of your gravity lines through which
1258 such oil is transported, were 15 miles in length. Would that gravity line, for instance, carry oil from several wells of producers?

A. Yes, sir.

Q. Could you tell where the oil was produced which was lost under that head?

A. Not the individual line, no, sir.

Q. Well, how could you tell that daily?

A. The station, the local station to which this oil moves, would receive so much in a tank.

Q. And you would know how much had been started on its course to that tank, would you?

A. The runs would indicate that amount.

Q. And you would deduct one from the other?

A. Yes, sir, the shortage appearing at our station would be indicated.

Q. Well now, that would be the only way you would know what you were chargeable with; that is, that it was delivered to you by the producer, and you would know what you would receive in your first gathering tank, is that it, and you deduct one from the other?

A. Yes, sir.

Q. Now, that would be done daily?

A. Yes, sir.

1259 Q. Would your receiving station exhaust, empty out the oil that was received on a particular day, the same day?

A. Generally, yes, sir.

Q. You could trace to what gravity line that loss occurred in, but you could not trace it to the producer?

A. No.

Q. Have you a form on which to report those losses?

A. Yes, sir.

Q. And that would be reported to you daily?

A. The losses are reported daily by telegram, followed up monthly by a general report.

Q. By a general report?

A. For the month.

Q. Now as to the legend on "Pumpings" appearing under the same head, can you trace the source of the losses under that head?

Mr. Crawford: Trace how? It seems to me indefinite.

Q. The source of the loss of the actual physical oil, what is what my question is directed to.

A. This loss occurs between stations, and our books would indicate where the loss occurs.

Q. Now will you just explain, please, to us how you would trace

that loss, or how you would ascertain that loss. Just tell me how you would trace that loss between the different stations?

1260 A. One station pumping to another, carefully gauges the tank *it* of which they are pumping hourly, and the station receiving such oil does the same thing.

Q. Hourly?

A. Hourly. The reports are made up for the day of 24 hours. At the end of 24 hours, ending at 7 A. M. any day, these stations wire us a report.

Q. Of the loss between those two stations?

A. They wire us a report showing the measurements for the tanks out of which they pump, and also the tanks into which the other station receives it. These are figured up in our office, and the shortage is arrived at in that manner.

Q. And then you enter it up daily?

A. Yes, sir.

Q. In getting your oil from the producers' wells to the stations and getting a report thereon, do those reports ever show a gain?

A. Yes, sir, they do at times.

Q. In a day?

A. Yes.

Q. In other words, some oil would come out of the gravity lines one day greater than the amount that had been put into those gravity lines?

1261 A. Yes, sir.

Q. How do you account for that, Mr. Kenney?

A. Well, the oil might move a little slower and get into the following day's business.

Q. Well, do your records show the gains each day, too, when there are gains?

A. Yes, sir.

Q. And you then keep a record of the gains and a record of the losses from that source?

A. Yes, wherever we have them.

Q. What do you mean by wherever you have them?

A. We do not have them at all points.

Q. Do not have what at all points?

A. We do not have a record of the shortage between the producer's well and our first station at all points, because there are some points at which there is other oil going into those same tanks, and we have no method of arriving at the shortage of the particular oil coming from the field.

Q. Well, have you any method of determining the gain in a particular oil that comes from that field?

A. Not at such a point as I have just mentioned.

Q. Are any of these figures, meaning the figures representing the barrels of oil on "Losses—wells to stations" and on "Pumpings," estimated?

1262 A. No, sir.

Q. Well now, at points where you do not keep records do you not make an estimate?

A. Well, that is true. We charge up to the station as receiving the full amount that was run from the producers' tank. It is not a true estimate, but it is the only method we have of arriving at the shortage. The shortage here was charged to the other oils, through pumping——

Q. (Interposing.) But you do make an estimate of that?

A. We make an estimate charging ourselves with the full amount of the credit balance as indicated by the runs from the producers' tanks.

Q. Well, do you ever make any estimates crediting yourselves with the gains for a day at those places?

A. No, sir.

Q. Then in making up your estimates at these stations where sometimes you have a lo s and sometimes you have a gain, you make an estimate of losses but never make estimates of gains?

Mr. Crawford: One moment. I object to the question. I do not understand that the witness has said that he made up an estimate. He said he charged himself with the full amount of the oil that was run in producers' tanks.

Mr. Avis: Not in his last answer, but I am referring to another statement that he made a while ago, Mr. Crawford. That
1263 question was not directed to his last answer.

Mr. Crawford: I wish to object on that ground.

Mr. Avis: Read my question.

(The question was read:) "Then in making up your estimates at these stations where sometimes you have a loss and sometimes you have a gain, you make an estimate of losses but never make estimates of gains?"

Q. Is not that true?

A. No, sir, it is not. We also include any overage that we have.

Q. That you know of.

A. That we actually have.

Q. That you actually have and actually know of?

A. Yes, sir.

Q. But do you ever include any estimates of possible gains for any day at those stations where you cannot get it actually?

A. No, sir, we charge ourselves with the full amount of the credit balance.

Q. Now let us see, Mr. Kenney, whether I clearly understand you or not. I understand that at certain stations you can tell each day whether you have suffered a loss or a gain. That is true, is it not?

A. Yes, sir.

Q. There are other stations at which you cannot tell
1264 whether you have suffered a loss or a gain; that is true, is it not?

A. Yes, sir.

Q. At those stations where you cannot actually tell, you make up estimates of losses and so place them on your books, do you not?

Mr. Crawford: The witness has not said so. I object to the question. It does not state the evidence correctly.

Mr. Avis: Mr. Crawford, I do object to your saying that the witness has not said so. Your recollection may be as faulty as mine. I think that the witness did say so a while ago.

A. We make up a statement of losses or gains.

Q. Well, if you do not keep any record at a station and have no way of ascertaining whether you have made a loss or a gain, do you make any record at all?

A. We make a record of losses or gains at all stations where we have an actual check between the two points.

Q. Did you not say a while ago, Mr. Kenney, that there were certain stations that you could not actually tell?

A. Yes, sir.

Q. Whether there was a loss or not, but that at those stations you made an estimate?

A. We made an estimate.

Q. Yes, sir. You enter that estimate in your books, do you not?

1265 A. We do not make an estimate. We charge the station with the actual amount of credit balances going against that station for that day.

Q. Yes.

A. That is no estimate. It is a concrete figure that we take.

Q. Then how could you determine whether there was a loss there, if you charge the amount of the credit balance?

A. We arrive at the loss from the total amount of oil received for that station from both sources—from the other stations and from the fields; that is, from the producers' wells.

Q. Well, what did you mean by saying that you made an estimate? That would not be an estimate, would it?

A. Well, if I used the word "estimate" it was used improperly. We charge out the full amount of credit balances against the station. That station is charged with so much oil going to it.

Q. Now, how can you tell whether that much oil went to it or not? I mean, the amount you charge to that station?

A. That cannot be told.

Q. Then there could not be any loss deducted at that station, could there?

A. There could be a general loss in all the oil received.

1266 Q. And then you charged so much to that station, whether it actually occurred at that station or not; is not that true?

A. No, there is an actual loss at that station between the oil coming from the producers' tanks and the oil being pumped in by other stations.

Q. Well, I may be awfully thickheaded about it, Mr. Kenney, but I say to you frankly that I do not understand you. If you have no way to determine at a station of that description whether it has suffered a loss or gain, how can you tell whether it has suffered a loss or gain by charging that station with a credit balance? Tell me the proces you go through with?

A. If the credit balance should amount to a thousand barrels——

Q. Yes.

A. (Continuing:)—and the other stations pumping there should pump a thousand barrels——

Q. Yes.

A. (Continuing:)—that would be two thousand barrels chargeable to the station that would receive this oil.

Q. Yes.

A. If that station received nineteen hundred barrels we would be one hundred barrels short on the day's transaction between——

Mr. Avis: Read that answer back to the witness and see if
1267 that is clear to him.

Mr. White: He does not mean "received" in that last part; he means "discharged".

(The answer was read:) "If the credit balance should amount to a thousand barrels, and the other stations pumping there should pump a thousand barrels, that would be two thousand barrels chargeable to the station that would receive this oil. If that station rereived nineteen hundred barrels we would be one hundred barrels short on the day's transaction between——"

Q. Now you have spoken of it as receiving two thousand barrels, and have spoken of it as receiving nineteen hundred barrels, and I cannot understand it.

A. Read the answer again, and I will make it clear.

(The answer was again read).

A. (Continuing:) Between the two sources.

Mr. Crawford: That is all right.

Q. Then as I understand you, you would charge a station of which you keep no record with the amount of oil that the other stations claimed to have pumped there?

A. We would have an actual gauge of the amount that the other stations pumped.

Q. Pumped there. Which would be in that instance two thousand barrels?

A. In that instance; a thousand for the station pumping——
1268 Q. Yes, and a thousand received from the producers' wells?

A. Yes, sir.

Q. Now then, how would you ascertain there were only nineteen hundred barrels there?

A. We would have a gauge on the tank in which this oil was rereived.

Q. Now there would be, then, on that transaction a shortage of a hundred barrels?

A. Yes, sir.

Q. How can you tell whether that shortage occurred on the pumpings or from the producers' wells to the station?

A. We cannot tell in that instance, no.

Q. You could not tell in that instance. Therefore your figures

as to wells to station and on pumping necessarily must be in pair estimates, are they not?

A. In small part. They are not estimates—They are estimates to the extent that I have just stated, yes.

Q. And they are arbitrary to a certain extent, too, are they not?

A. No, I would not say that.

Q. On the illustration you have given us just now there is no way on earth you could tell whether the loss of that hundred barrels was due to pumping or whether it occurred in the gravity lines from the producers' wells to that station, is there?

1269 A. We have reason to believe, and know, that the greater loss is suffered in the gravity lines as compared to our pumping lines.

Q. Yes, but whenever you charged so much to wells to stations and so much on pumpings, you have just simply used arbitrary figures or percentages, have you not?

A. Yes. We did not attempt to divide the shortage in that case.

Q. In that illustration where would you charge that hundred barrels; on wells to stations or on pumpings?

A. That would be chargeable to from wells to stations.

Q. Whether it might have occurred, or whether it occurred on pumpings or not?

A. Yes, sir, we would charge that to wells to stations.

Q. Then you would charge all of that hundred barrels to the item wells to stations, that is correct?

A. No, we would charge it to pumpings to stations. Your last question covered that, did it not?

Q. No, sir.

A. Well, repeat it.

Q. I understood you to say you charged it all, Mr. Kenney——

Go back again and read it please. That is the reason I asked you so many questions, because I clearly understood you to say that in that case you would charge it to wells to stations.

1270 The Witness: I misunderstood your question.

(The three questions and answers were read to the witness beginning, "In that illustration where would you charge that hundred barrels?")

Q. Now, you have got it both ways, Mr. Kenney. How can I understand you?

A. I will make it clear.

Q. All right.

A. I misunderstood your question. We would charge that hundred barrel shortage on pumpings, that is from station to station, and we would charge the credit balances with the full amount, that is, the hundred per cent of oil; that is, the gross amount of oil as shown by the credit balances.

Q. Well, all I want to know is whether you charge that whole hundred barrels in the illustration that you have given, to the item wells to stations, or to the item on pumpings, which occurs

under the head of "Losses" on your Exhibit 54. You can answer that either yes or no, Mr. Kenney.

A. Yes. Where we have no check on the oil received from the producers' tanks, such as we have been speaking of——

Q. I understand.

A. (Continuing:) —on account of oil coming in from other stations, any shortage occurring at that station is charged on pumpings.

1271 Q. On pumpings. And in the illustration which you gave a while ago, about the two thousand barrels going into a station and nineteen hundred being there, where there was a loss of a hundred barrels, that would go in and would appear on this Exhibit 54 under the heading "On pumpings." That is correct, is it not?

A. Yes, sir.

Mr. Avis: That is all.

Redirect examination.

By Mr. Crawford:

Q. Whether a particular loss is charged on wells to stations or on pumpings or on any of the other headings that are included under the head of "Losses" in the table of "Analysis of fluid loss" in Exhibit 54, do you mean to testify that the company did sustain losses amounting to 150,557.40 barrels?

A. Yes, sir, I do.

Q. And do you testify similarly as to the aggregate of losses which are shown on the other similar exhibits, 55, 56, 57 and 58?

A. Yes, sir.

Mr. Avis: There is one question I overlooked to ask him, but I will wait until you get through if you wish.

Mr. Crawford: To wait until I get through would be better.

1272 Q. You have testified at some length in regard to the subjects of expansion and shrinkage, by which, as I understand from your testimony, you mean changes in volume due to changes in temperature?

A. Yes, sir.

Q. That is correct, is it not?

A. Yes, sir.

Q. What kind of a change——

Mr. Avis: Now, is that what he said, Mr. Crawford? I understood him to say a change in volume is due sometimes to evaporation.

Mr. Crawford: He said it to me in exactly those words, more than once.

Mr. Avis: I know he did to you, and yet he said to Mr. Mathews that he used "shrinkage" and "evaporation" as synonymous terms.

Mr. Crawford: I am going to get to that now.

Mr. Avis: Yes, sir, but you are putting into his mouth that he has said——

Mr. Crawford: Well. he did say it.

Mr. Avis (continuing): That it was due entirely to the one cause.

Mr. Crawford: He did say it.

Mr. Avis: Well, I object to the question on the ground
1273 that the question does not properly incorporate the entire statement of the witness; that while the witness may have, on examination in chief, used the term used by Mr. Crawford, yet he in his cross examination explained that he used the words "shrinkage" and "evaporation" in the same sense.

Mr. Crawford: I do not think that the testimony bears that construction, but as I do not wish to be needlessly involved in a controversy when I think the thing can be all cleared up, I will pursue the subject in such a way as I think will meet your objection.

Q. There seems to be, according to the statement of counsel, some inconsistency in the testimony you have given in regard to your use of the words "shrinkage" and "expansion." Now I will ask you again, what you mean by the word expansion where it is used in these exhibits?

A. Expansion is caused by change in temperature that increases the volume of the oil.

Q. Well, what kind of a change in temperature, Mr. Kenney?

A. A change from colder to warmer, or from a lower to a higher temperature.

Q. Yes. Now then, in what sense is the word "shrinkage" used in these exhibits?

A. Shrinkage is caused through a change in temperature, which reduces the volume of oil, the change in temperature going
1274 from a higher to a lower temperature.

Q. In other words, when the temperature is diminished the volume decreases?

A. The volume decreases.

Q. And do you now say that is what is meant by the word "shrinkage" as used in these exhibits?

A. Yes, sir, I do.

Q. Reference has been made to evaporation, and you were interrogated in regard to that. Let me ask you this question: Does not a loss occur from the escape of gas from the mass of oil in tanks?

A. Yes, sir.

Q. Is it not a fact that if oil is agitated in any way in a tank, bubbles of gas rise to the surface and escape?

A. Yes, sir.

Q. When the flow of oil is started from a producer's tank, does not that phenomenon occur?

A. Yes, sir, it does.

Q. Well, is not that one source of loss in volume?

A. That is a source of loss.

Q. Under what general head is that included in your business?

A. That is included under the general head of losses from wells to stations.

1275 Q. Well, would you include that under the head of evaporation or not?

A. No, we have no heading of evaporation; that is, we have no account named "Evaporation."

Q. I understand; but, nevertheless, the word "evaporation" is used in your business, is it not?

A. Yes, sir.

Q. And when so used is it used to include a loss by the bubbling up of the gas?

A. Yes, sir.

Q. It is so used?

A. It is so used.

Q. Well, now, did you intend to testify that "shrinkage" as used in those exhibits meant the same thing as "evaporation," as that word is used in your business?

A. No, sir, I did not. In answering the question I meant that the result was about the same thing; that is, it was a loss to us. There is a physical difference in the two things, shrinkage and evaporation.

Q. Well, what do you mean by saying that the result is about the same? I think you have used those words.

A. That is, we sustain a loss from evaporation; we also sustain a loss from shrinkage. There are two distinct losses.

Q. In the instance referred to, where you have no means
1276 of determining the gain or loss in oil received from producers' tanks, explain again why you are not able to do that.

A. It is because there is oil coming from other stations, that is oil being pumped from other station or stations to the station to which this credit balance oil may be coming. It goes into the same tanks.

Q. You mean to the station where the oil is coming down through a gravity line?

A. Yes, sir.

Q. Or at least, a line from the producers' tanks?

A. Yes, sir.

Q. Now you have stated what would happen if the result of the two operations showed a loss?

A. Yes, sir.

Q. In the example that was used by counsel, the loss was supposed to be on the combined operation 100 barrels; and you, as I understand, say that that would all be charged to pumpings?

A. Yes, sir.

Q. If, in fact, you had made a gain on the oil which came from the producers' tanks, that is to say though you charged yourself with the whole amount of the oil that was received from the producers, say that would be 100 per cent, if in fact you had received 102 per cent or 105 per cent of that volume and thereby made a
gain of the 2 per cent or 5 per cent at that point, would not
1277 that gain be reflected in the net result of the two operations? I mean to say, you are getting a certain amount of oil through from the producers' tanks, and you charge yourself with 100 per cent of it, 100 per cent of what was delivered to you?

A. Yes, sir.

Q. You are getting a certain amount of oil from the next station

on the main line, or on the line at any rate, from which a column of oil is coming by pumping, and they come together in the same tank?

A. Yes, sir.

Q. And suppose in fact that more than 100 per cent in volume came down through that line from the producers' tanks into this common tank, the tank receiving the flow from the two directions, would not that gain, if there was a gain, be reflected in the net result of the two flows? I mean, so that when taking the two together and gauging the volume of the two, would not that gain show? That is, would it not show either by reducing the loss on the pumpings from the next station, or if there was no loss there show by a net gain?

A. It would show a net gain on the pumpings.

Q. And your records, your general records, would show that?

A. Yes, sir.

Q. So that the gain, if any, would not be lost on your
1278 general record, is that correct?

A. No, sir, it would not be lost.

Q. And it would be entered indirectly, if not directly, upon your records, would it not?

A. Yes, sir, it would.

Mr. Crawford: That is all.

Recross-examination.

By Mr. Avis:

Q. Mr. Kenney, I understood you to say that some days you would show a profit on your oil from wells to stations, and on other days you would show a loss; that is, at those stations where you kept a record. That is true, is it not?

A. That is true.

Q. That is true. Now on the day that you showed a loss there would be a report made of that loss, would there not?

A. It would be entered on our books.

Q. Entered on your books, and a report made, as you have described, a daily report?

A. Yes.

Mr. White: Captain, when you used the word "profit" there, did you not mean "gain"? That is the word that has been used.

Mr. Avis: I meant gain, yes.

Q. If the next day there should be a gain instead of a loss, would that immediately be reported and entered in your books?

1279 A. It would be reported in the same manner as the loss.

Q. And entered on your books?

A. Yes, sir.

Q. All right. Now on the illustration that you gave a while ago, of the 1,900 barrels, if there were a loss of a hundred barrels on that transaction you have stated that you would charge that loss

of a hundred barrels to the item on pumpings; that is correct, is it not?

A. Yes, sir.

Q. Now suppose the next day there would be an excess of a hundred barrels at that station, how would you enter up that gain?

A. We would credit it to pumpings.

Q. Credit it to pumpings. Now, is it not your experience that in handling a thousand barrels of oil from the producers' wells to the stations, there is a greater loss than there is in pumping a thousand barrels from one tank to another?

A. Yes, there is more loss in gathering the oil from the producers' tanks.

Q. Well now, will you please explain to me why, if that be true, that in the case of a loss of a hundred barrels, in the transaction of 1,000 barrels coming from the producers' wells to the station and 1,000 barrels coming from a tank to that station, you would charge that to "on pumpings"?

1280 A. We have already charged the credit balance with the full 100 per cent, figuring that that will take care of that feature of it.

Q. Well, why should not that loss go, if the greater part of it should go there, from wells to stations, instead of to "on pumpings"?

A. We have no way of separating it, other than the one in which we——

Q. (Interposing.) I understand that, but you say that on the 2,000 barrels transaction that we have been using for the purposes of this illustration, the greater amount of that loss would be in the 1,000 barrels that came from the producers' wells, and yet you would charge all of that loss to "on pumpings." Now, why do you not reverse that, if the greater loss should go to "wells to stations," and charge it to "wells to stations?"

A. It is customary to charge such losses or gains to the pumpings.

Q. And you can give no other reason for doing it, except that it is customary?

A. It is customary and has been done for years, by all companies.

Q. Let me ask you this question, do you in your business of handling oil and transporting oil, take into consideration climate, climatic conditions?

1281 A. Only to the extent that during extreme cold weather oil in producers' tanks has to be steamed.

Q. If you could receive all of your oil during cold weather and deliver it all on tenders to consignees in warm weather, you would make a profit on that, would you not, instead of if the condition were reversed?

A. We would have some gain in expansion, yes, sir.

Q. Do you not take that into consideration in handling oil?

A. We handle oil from one end of the year to the other, and the expansion and shrinkage almost equal each other, except that shrinkage will amount to a little more than the expansion will bring back.

Q. Because of evaporation and waste?

A. Because of certain conditions, there is loss through evaporation, yes.
Q. And other causes, leakings?
A. Well, not generally leaking. It will occur where there is no leak whatever.

Mr. Avis: That is all.

1282 THE EUREKA PIPE LINE CO.

VS.

WALKER S. HALLANAN et als

New York, January 9, 1920.

Met pursuant to adjournment.

Appearances:

For the plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.
For the defendants: W. Gordon Mathews.

1283 Afternoon Session.

FORREST M. TOWL resumed the stand:

Direct examination.

By Mr. Crawford:

Q. Mr. Towl, will you look at Plaintiff's Exhibit 69, and I direct your attention to the several columns which speak of "Reserve set aside for taxes," tables in different years or portions of years, and I ask why these reserves are set up on your books in that manner and to explain the general plan. I am not asking you with special reference to any particular figures, but I want you to explain the method and the reason for it?
A. The method is an approximation of what the taxes would be for the year, and then to set them up month by month as requested by the Interstate Commerce Commission. The idea is so that it will not make the monthly receipts and expenses so widely different.
Q. You make an estimate as nearly as you can of what you think the taxes will be for the year?
A. Yes, sir.
Q. And then you adopt this plan in accordance with the direction of the Commission?
A. Yes, sir.
Q. It has no other meaning than that?
A. That is all.
1284 Q. I show you Plaintiff's Exhibit 54 on which it appears that in the twelve months under consideration there was a

decline in the gross stocks of Pennsylvania grade oil in the system of the Eureka Pipe Line Company of 120,642.51 barrels. I ask you whether there was any special reason which would account for that decrease in the amount of stocks of that grade of oil? The period is of course from July 1, 1918, to January 30, 1919?

A. The amount of stocks changes sometimes quite rapidly day by day. The amount going out of West Virginia is fairly constant, but the amount coming in from the Buckeye Pipe Line Company in Ohio and a small amount from the Southwest Pennsylvania Pipe Lines changes this amount sometimes quite rapidly.

Q. Was there any special drain on Pennsylvania grade oil that year?

A. Yes, sir. The request from government authorities was to get forward all the Pennsylvania grade oil possible. They went so far as to send out through their war committees a request for the people that owned credit balances to sell the oil with the threat that if they didn't sell it it would be taken by the Government.

Q. Look at Plaintiff's Exhibit 57, which is a similar table relating to Somerset Oil, where it appears that on June 30, 1919, there was an increase in the gross stocks of Somerset as compared with the year previous of some 121,000 barrels. Was there any special
1285 reason why the stocks of Somerset oil should have increased at that time?

A. The stock of Somerset oil increased quite rapidly and diminished quite rapidly as it is pumped out from the Morgantown station, also the amount that was being received in June, 1919, was much larger than in June, 1918, and the fact that certain parts of the lines between Kentucky and Morgantown had to be used for handling Pennsylvania grade oil at times would cause at such times an accumulation of stock below Hamlin.

Q. What particular part of the lines are you referring to as being required for Pennsylvania crude?

A. Between Hamlin and Morgantown, certain points of the lines are used intermittently to take care of certain Pennsylvania oil in the lower part of West Virginia.

Q. Were those lines used for that purpose more frequently than used during this year or during the last part of the year?

A. They were used less frequently during the latter part of the year than they were in the first part of the year, but the effect was greater because the production of Somerset oil was greater and the days that were set apart for that use would back up more Somerset oil into the system.

Q. Is this what you mean, that the amount of Somerset oil that you were receiving—I suppose at Tug River?

1286 A. Yes, sir, at Tug River.

Q. That that amount being larger during those twelve months than it had been theretofore, the use of the lines from Hamlin north for the purpose of transporting Pennsylvania Grade oil would necessarily cause a larger amount of Somerset oil to accumulate between Tug River and Hamlin than had theretofore been the case?

A. Yes.

Q. Which had accumulated in the interval?

A. Yes. There were some other slight reasons. There were some new lines laid and some new tanks put in operation which would account for a small part of the amount.

Q. It has been testified here by the accountant that in the middle of the year, or at any rate as applicable to the last six months of the period under examination the rate of depreciation adopted by the company was increased from three per cent to six per cent. I think I have it right?

A. Yes, sir.

Q. Do you know why that was done, and if so, please state?

A. The whole question of depreciation was gone over by the company's representative very carefully. I had the matter up with others and as we had spent a large amount in new construction during the previous year, we considered that we should set aside a larger depreciation.

1287 Q. What bearing has new construction upon it specifically?

A. A new line or new piece of line when it goes into an old plant really has only the value of the surrounding part of the old plant, and is put in and at this particular time was put in at a very high price, and we could not charge off the depreciation on the new part as a good deal of it was not yet on our books as a capital account item. It was in suspended account.

Q. But you anticipated a decline in value in it?

A. There was a decline in value.

Q. Was the higher price due to the war conditions, the cost of labor, and so on?

A. Yes, sir.

Q. And pipe, I suppose?

A. Yes, pipe and labor.

Q. What was the difference in the price of pipe as compared with the previous year or years?

A. Well, the pipe averaged about twice as much, and the labor didn't average quite twice as much, but when you took into account the results you got from the labor it would average about twice as much.

Mr. Mathews: I don't think the witness meant to say what he did say, that there was a decline in value of this new pipe. You
1288 didn't mean that has gone down in actual value, do you?

The Witness: A decline in value as to our plant. When the pipe,—when a piece of new pipe is put into an old line, it takes the value as of that line in a practical way, and when that line ceases to be used——

Mr. Mathews: I understand, but Mr. Crawford said you anticipated the decline in value, and he was talking about market value, as I understood. And you said there has been a decline.

The Witness: Not in market value.

Mr. Mathews: I was quite certain that that is not what you meant.

The Witness: Not in market value.

Q. Then as the result of your consideration and that of your col-

leagues of all those facts you decided that the rate of depreciation should be advanced to six per cent?

A. Yes, sir. The whole question of depreciation was also considered shortly after we took this matter up by the Government in their revenue circular, and that confirmed our opinion as to the fairness of this value of depreciation.

Q. Do you refer to the statement bearing on the pamphlet entitled "Manual for the Oil and Gas Industry, under the Revenue Act of 1918," published by the Treasury Department, the Division
1289 of Internal Revenue?

A. Yes, sir.

Q. This book which I show you is the one you have in mind (handing booklet to witness)?

A. Yes, sir.

Mr. Crawford: I ask that that be marked for identification.

Booklet marked Plaintiff's Exhibit 79 for Indentification.

Mr. Crawford: I want to offer in evidence certain statements from Plaintiff's Exhibit 79 for Identification, from that part of this booklet entitled "Part II, Estimate of Depreciation of Equipment used in the Oil & Gas Industry", those words appearing at page 56 and under that general title the language on page 59, beginning with the words, "Class B—Pipe Lines", and extending down seventeen lines. I ask that that be marked Plaintiff's Exhibit 79-A, and for convenience I ask that it be copied into the record at this point.

Mr. Mathews: To the introduction of such manuscript in evidence by the plaintiff the counsel for defendants objects unless the explanatory portion of this exhibit found on page 56 and showing how this suggestion contained in said book shall be applied, is also included in the offer. I refer to the second and third paragraphs on page 56 of such manual.

Booklet received and marked Plaintiff's Exhibit 79-A.

1290 Q. Mr. Towl, have you refreshed your memory as to the portions of the pipe line system of the Eureka Pipe Line
1291 which are classified on the books of the company as gathering lines and as trunk lines?

A. Yes, sir.

Q. Will you not state, referring, if you please, to the map marked Plaintiff's Exhibit 3, third map, or any other exhibit in evidence, what are the lines which are classified on your books as gathering lines and what are classified as trunk lines?

A. The trunk lines are the lines from Tug River, the line between Kentucky and West Virginia to Hamlin Station; the station at Poca classified as a trunk line station. The lines where the South West Pennsylvania Pipe Lines connect with the lines of the Eureka Pipe Line at the Pennsylvania-West Virginia state line northwest of Morgantown, and from that point into Morgantown; and the lines from Morgantown to where the Eureka Pipe Lines connect with the Southern Pipe Lines at the Pennsylvania-West Virginia state line. And

Morgantown station exclusive of all but two of the tanks at Morgantown.

Q. What you have enumerated is what are classed on the books of your company as trunk lines?

A. Yes, sir.

Q. What about the rest?

A. The other lines are classified as gathering lines.

Q. Can you state what tanks are included in the classification of trunk lines on the books of the company, and if you haven't
1292 it in mind I will ask you to refresh your recollection from a memorandum I hand you and state?

A. The two tanks at Morgantown, two tanks at Tug River, pumping station, and two tanks at Poca Station.

Q. What about telegraph wires, how are they divided, how are they classified?

A. Telegraph wires from the Kentucky state line to Hamlin Station are classified in the trunk line system, and also the lines from Morgantown Station northeast to where they join the Southern Pipe Line Company.

Q. Those you mean are classified as trunk line wires?

A. Yes, as trunk line wires.

Q. When was that classification first made?

A. In 1915 when the Interstate Commerce Commission asked us to keep a separate account of the trunk lines and the gathering lines, after the conference that they had with the representative of all pipe lines doing business in the country.

Q. It was in consequence of the direction you received from the Interstate Commerce Commission that it was decided to make a classification of the gathering lines and a classification of the trunk lines?

A. Yes, sir.

Q. What was the reason for this particular classification if there was a reason?

1293 A. I explained to the representatives of the Interstate Commerce Commission and to a number of their auditors that a great deal of this system was used by both the trunk lines and the gathering lines, and they told us to make the best division that we could of it; where the trunk consisted of the gathering and the trunk items, to just do the best way we could. We took the matter up and we had maps prepared and went into it very carefully and as the simplest system for taking account of the matter, we divided the system as I have stated.

Q. What do you mean by taking account of the matter?

A. I should have said for keeping the account of the matter.

Q. What do you mean by keeping account of the matter?

A. Separating the two systems into gathering systems and trunks.

Q. You mean as the simplest method of accounting?

A. Yes, the simplest method of accounting.

Mr. Mathews: Counsel for the defendant object to so much of the previous answers as purport to give conversations with the Interstate

Commerce Commission and certain unnamed auditors of such Commission as being considered as a basis or reason for the witness' action in classification. No objection is made to any ruling which the Eureka Pipe Line Company has obtained from the Commission or to any instructions received from such Commission or to
1294 the introduction in evidence of any of the printed rules or regulations of such Commission.

Q. What general rule have you followed in regard to the distribution of expenses between what are classified as gathering lines and what are classified as trunk lines on your books?

A. I don't know as I quite understand what you mean.

Q. I mean when a particular expense is incurred, what determines so that it shall be charged under the head of gathering lines or charged under the head of trunk lines.

Mr. Mathews: Counsel for the defendant object to the foregoing question and any answer thereto, for the reason that on the last occasion of this same witness being on the stand, he was examined and cross examined exhaustively as to the basis for the apportionment as to which he is now being questioned and repeatedly stated that he did not even know what that basis was in any case.

Mr. Crawford: I will withdraw the question for the moment.

Q. Have you since you were on the stand before examined into the methods by which the accounts of the company are kept so that you are now able to state what is the rule or basis according to which the total expenses of any item of expense are or is distributed as between the lines classified as gathering lines and classified as trunk lines?

A. Yes, sir.

1295 Q. Will you please state what the basis for such distribution is, or what is the rule which is followed?

A. The rule that is followed is wherever possible to determine the exact nature, to charge it to whichever system it properly belongs.

Q. You mean to whichever group of lines?

A. Whether trunk lines or gathering lines. Where it is met and cannot be definitely ascertained to which group it belongs, the apportionment of the salary of some of the men, or some similar item of that kind, it is divided 80 per cent gathering and 20 per cent trunk.

Q. How are the salaries of the general officers divided?

A. Into 80 per cent gathering and 20 per cent trunk.

Q. At the time that this classification was adopted, was there any adjustment made of the revenues received from through transportation? That is, I mean to say, transportation of oil received from other States?

A. Yes, sir.

Q. And in a general way what was that, without giving any particular figures, what was done in the way of adjustment?

A. In general the revenue was apportioned in an approximate proportion to the service rendered by the gathering lines or the trunk lines.

1296 Q. Well, did you undertake in each specific case to ascertain exactly what such a division should be or did you adopt an approximate method of division? I don't mean approximate method but approximate rate of division?

A. We adopted an approximate rate.

Q. I hand you a paper and ask you whether that is a paper prepared under your direction, and if so what it states?

A. Yes, sir, this is a paper showing how we divide the transportation revenue between gathering lines and trunk lines.

Q. The first item of the Eureka tariffs, from or passing through Morgantown, what tariff does that include?

A. That is the division of the joint rate that is apportioned to the Eureka Pipe Line Company.

Q. On what tariffs? Immediately following are the words, "All other Eureka tariffs." How do you distinguish what are included in the first group and what in the second?

A. The first group includes tariffs from or passing through Morgantown.

Q. And the others?

A. The second group includes all other Eureka tariffs.

Q. Such for example as those which are made between the Eureka and the South West Pennsylvania Pipe Lines?

A. Yes, sir, from Core and other small points that do not pass through Morgantown.

1297 Q. Of your share of the through revenue under the first group of tariffs all of it is credited to the trunk lines, is it?

A. Yes, sir.

Q. And under the second group all credited to gathering lines?

A. Yes, sir.

Q. In the case of the Buckeye tariffs, what about those?

A. The Buckeye tariffs consist of two groups of points, one we call Southern Ohio points, or Southern Macksburg points sometimes; and those—the points that come in to West Virginia in the vicinity of Parkersburg.

Q. Does that include Eureka?

A. And Eureka, yes, sir, that pass quite a long distance through the State of West Virginia, the Northern Ohio points, those that pass through the part of West Virginia usually spoken of as the Panhandle.

Q. Of your share of the through rates on the shipments coming from Southern Ohio points as you have denominated them, you credit that 75 per cent to the lines you classify as gathering lines and 25 per cent to those you classify as trunk lines?

A. Yes, sir.

Q. And in case of your proportion of the through rates on shipments coming from the Northern Ohio points, it is 50-50, is it?

1298 A. Yes, divided equally.

Q. You have an item here "Cumberland tariffs" and that I suppose refers to the tariffs under which the Somerset oil moves?

A. Yes, sir.

Q. And on your proportion of the through rate for the through transportation of Somerset oil how do you divide it?

A. 75 per cent to the gathering lines and 25 per cent to the trunk lines.

Q. How about the oil that comes to you over the South West Pennsylvania Pipe Lines?

A. The South West Pennsylvania Pipe Lines tariffs, it is divided evenly, 50 per cent trunk and 50 per cent gathering.

Q. There is oil which comes over those lines from the western States which are set forth I suppose in the last item?

A. Yes, sir.

Q. That is the western oil?

A. Yes, sir.

Q. In the case of western oil, how do you divide that?

A. That is 100 per cent trunk lines. It goes along through the lines that are classified as trunk lines with the exception of the note at the bottom of this sheet.

Q. Explain that note at the bottom of the sheet?

A. "All western oil tariff,"—the receipts from all western oil
1299 tariff moving via Morgantown; the oil has to pass through the tankage at Morgantown. This tankage is considered as being a part of the gathering lines system.

Q. You mean is classified?

A. Is classified as being a part of the gathering lines system, and three-tenths of a cent per barrel is credited to the gathering lines revenues for the use of these tanks. On the slip the cents should not be marked. That mark should be erased. It should be three-tenths of a cent.

Q. The cent mark ought to come off?

A. Yes.

Q. And the dollar mark ought to precede it?

A. Yes, sir. We keep all of our accounts in dollars and once in a while someone puts in that cent.

Q. To prevent any misunderstanding I ask you whether this rate of payment for the use of these tanks which are classified as belonging to the gathering lines is three-tenths of one cent per barrel?

A. Three-tenths of one cent per barrel.

Mr. Crawford: I offer this statement in evidence for convenience and ask it be marked Plaintiff's Exhibit 80.

Paper received in evidence and marked Plaintiff's Exhibit 80.

1300 Q. I call your attention to Plaintiff's Exhibit 46-D and direct your attention especially to an item on the second table of that exhibit, the table being entitled "Operation of oil tanks," and in the column headed "Trunk 274" there is an item of $23,462 concerning which an inquiry was made I think of Mr. Whitehead and also of Mr. Johnson who testified this morning. You were present and heard them testify to it, I think?

A. Yes, sir.

Q. I ask you whether there be *an* any connection between that

item and anything appearing on this Plaintiff's Exhibit 80, and if so, give the explanation?

A. That is the amount charged to the operation of oil tanks and it is credited to the gathering line revenues.

Q. It is charged to what group of lines?

A. The trunk line group.

Q. Is that because under the classification you have described, the tanks used at Morgantown are considered to be in the group of gathering lines?

A. Yes, sir.

Q. And being used by trunk lines?

A. This is a payment made by the trunk lines to the gathering lines for the use, yes.

Q. As a matter of fact it is a bookkeeping entry, isn't it?

A. Yes, sir.

1301 Q. No cash basis for it?

A. No.

Q. The company is no richer by that entry?

A. The company is no richer.

Q. It was testified by the accountant that there were corresponding amounts credited to the gathering lines. Is that correct?

A. Yes, sir.

Q. I hand you Plaintiff's Exhibit 4, which sets forth gross revenues from transportation, and ask you if you know whether this item appears anywhere on that to the credit of the gathering lines or whether it appears anywhere in any of the exhibits in the case? If you don't know, please say so. I don't want a guess of it.

A. The detail of it does not show on Plaintiff's Exhibit 4. It is included in items in Plaintiff's Exhibit 4 but the detail of it does not show on Exhibit 4.

Q. Referring again to Plaintiff's Exhibit 80, have you had a table constructed to show the distribution of the revenue on through shipments, that is, shipments coming to your company from outside the State of West Virginia which were set forth on Plaintiff's Exhibit 4?

A. Yes.

Q. I hand you a table and ask you if that is the table that

1302 you have prepared?

A. Yes, sir.

Q. Comparing this sheet with the sheet 1, Plaintiff's Exhibit 4, I understand that everything in the first column comprising substantially the left hand half of the page is the same as that shown on the left hand side of Exhibit 4, sheet 1?

A. Yes, sir.

Q. Except that the destinations are not mentioned?

A. Yes, sir.

Q. Will you be sure and see if that is right? I think that is so but I don't want any mistake about it?

A. The destinations are not mentioned and the barrels and the rate are not mentioned.

Q. It is the same as everything in that statement shown except the names and the destinations?

A. Yes, sir.

Q. I note also that at the bottom of Plaintiff's Exhibit 4 there is an item about total deliveries for 12 months which is omitted from this new sheet. That is so, is it not?

A. Yes, sir, that is omitted.

Q. In the shee which you are now examining there next appears a column under the head "Amount" and that is the same as the last column of Plaintiff's Exhibit 4, is it not?

A. Yes, sir.

1303 Q. Please state what the column headed "Gathering" shows and where the figures there shown are got from in the sheet which you are now speaking about?

A. The gathering shows the proportion that is attributed to the gathering system; the trunk shows the proportion that is accredited to the trunk system.

Q. You mean then, the totals which are indicated under the head of amount?

A. Out of the totals which are under the heading of amount.

Q. That means that you have credited to the lines classified gathering lines all the returns, all the revenue from the shipments in the first group in Plaintiff's Exhibit 4?

A. Yes, sir.

Q. And now the amoun's below that in the column under gathering and the column under trunk, are they divisions of the totals in the column under the head of amount?

A. Yes, sir.

Q. And you mean by that that of the total revenue from the through shipments which are set forth both in Exhibit 4 and in this sheet under the head of "Oil produced outside West Virginia and delivered to other carriers on I. C. C. tariffs," the proportion credited to gathering lines is set down in the column under the word gathering and the proportion credited to trunk lines is set down in the column under the word trunk?

1304 A. Yes, sir.

Q. That is correct, is it?

A. Yes, sir.

Q. At the bottom there are totals given, are there not, of the three columns?

A. Yes, sir.

Q. Revenue received from the through shipments, I mean the shipments of oil produced outside of West Virginia and delivered to other carriers on I. C. C. tariffs?

A. The total is $1,233,049.77.

Q. Of that amount what part is credited to the lines which are classified as gathering lines?

A. $809,577.45.

Q. And what part of it is credited to what are classified as trunk lines?

A. $423,472.32.

Q. Of the last group including the shipments under I. C. C. 158 and I. C. C. 149, the entire revenue is credited to the trunk lines?

A. Yes, sir.

Q. Can you figure up—unless you have the figures there before you—what is the aggregate amount of revenue which is credited to the lines classified as gathering lines and shown upon the sheet?

1305 A. $2,058,859.25.

Mr. Crawford: I offer this in evidence and ask it be marked Plaintiff's Exhibit 81.

Paper received in evidence and marked Plaintiff's Exhibit 81.

1306 Q. What is the total gross revenue from transportation as shown on Plaintiff's Exhibit 4, sheet 2?

A. $2,669,692.47.

Q. Will you figure what percentage of the total gross revenue this amount of revenue credited to gathering lines is a part?

Mr. Crawford: To save time may it be taken—I haven't figured every bit of it, but I am quite sure I have the figures, and may it go in subject to correct-?

Mr. Mathews: Yes.

Mr. Crawford: I am quite sure that I am not more than a decimal out of the way if any. It is admitted subject to correction that the total amount of revenue on Plaintiff's Exhibit 81 to be credited to the lines classified as gathering lines to wit, $2,058,859.25 is about 77 per cent of the total gross revenue from transportation, to wit, $2,669,692.43.

The Witness: That is about it.

Q. Turning to Plaintiff's Exhibit 45, the total expenses for the twelve months other than general expenses which appear on sheet 3 of that exhibit are set down as being $1,711,765.05, and the total expenses charged against gathering lines set down as $1,471,324.38. Will you calculate what percentage of the total expenses are these expenses charged to gathering lines?

1307 Mr. Crawford: Subject to correction it is admitted that the desired percentage is about 86 per cent; that is to say the expenses charged to gathering lines are about 86 per cent — the total expenses, both being shown by Plaintiff's Exhibit 45 other than general expenses shown on the third sheet thereof.

The Witness: That is approximately what it is.

Q. Before proceeding further I want to ask you a question which my colleague here has suggested: Referring to Plaintiff's Exhibit 80, when was it that these ratios for the division of revenues were arrived at first and first put into operation?

A. In 1915 at the time of the separation into the two systems.

Q. And have been observed ever since, have they?

A. Yes, sir.

Q. I asked you, did I not, Mr. Towl, to have some calculations made on the supposition that you withdraw from your present classification the gathering lines and added to your present classification

of trunk lines the main lines from Hamlin through to Braden and from Eureka through Braden and Downs to Morgantown?

A. Yes, sir.

Q. I asked you, did I not, to have calculations made showing what would in such case be the necessary changes made in the charging of expenses and in the crediting of revenues?

A. Yes, sir.

1308 Q. Have you had that done?

A. Yes, sir.

Q. I show you a sheet. Will you please explain just generally what this is?

A. This is an analysis of the expense of lines from Hamlin to Braden and from Eureka to Downs.

Q. Prepared according to the same general plan as Plaintiff's Exhibit 45 I suppose?

A. Prepared in the same manner, and in the majority of instances taken from our books. There are one or two items in which there is a small part of it that is not apparent just what it is, and it is estimated.

Mr. Mathews: I call your attention to the fact that you just stated that this analysis of expense of lines was Hamlin to Braden and from Eureka to Downs.

The Witness: From Eureka through Downs to Morgantown, excuse me.

Mr. Crawford: I am obliged to you for that, Mr. Mathews.

Q. Can you point out the items which are estimated, or can you state how much they amount to?

A. Most of the items are kept on our books so that we could take them off without any trouble at all, without changing the analysis. They have been kept by districts. There are some places where the district is not divided sharply between the gathering and the

1309 trunk lines and I believe there is a question as to about $25,000 of the total charges.

Q. About $25,000 of the total is estimated, is it?

A. That is my recollection.

Q. Apart from that the rest of it is shown from the books?

A. Yes, sir.

Mr. Crawford: I offer this in evidence.

Mr. Mathews: Counsel for the defendant object to the introduction in evidence of this schedule as being incompetent, irrelevant and immaterial, and particularly because it is based upon conditions which do not exist and which so far as the record shows there is no expectation that they will exist.

Paper received in evidence and marked Plaintiff's Exhibit 82.

Q. This shows the total expenses of those lines from Hamlin to Braden and from Eureka to Morgantown was $297,790.48, part of which as you stated was estimated?

A. Yes, sir.

Q. And it was estimated as closely as possible?

A. Yes, sir.

Q. Were that shift to be made or that transfer of these lines from the classification of gathering lines to the classification of trunk lines, would that have any effect in regard to the way in which the revenue received from shipments from outside the State
1310 should be credited?

A. Yes, sir.

Q. You testified in substance as shown by Plaintiff's Exhibit 81 that at the present time out of the revenue received from such shipment an aggregate sum of $809,577.45 is credited to gathering lines. Would any part of that have to be credited back to the new classification of trunk lines?

A. Yes, sir, all of it.

Q. Are you quite sure about all of it? What about the revenue received from the Prairie, on the Prairie shipments?

A. I beg your pardon, I should not have said all of it. It would be all but the three-tenths of a cent which is allowed for the use of the tanks at Morgantown.

Q. How much does that three-tenths of a cent amount to in this instance, have you the data for determining quickly? Aren't you mistaken about that?

A. I am mistaken about that. The three mills,—no, I am not mistaken, the three mills is in the column of gathering.

Q. Mention the items that you think are the three mills, will you? Just read off the total?

A. $11,186.00
3,571.99
1,488.41
372.09
5,951.68
1311 567.97
892.73

Q. Well, will you before tomorrow figure out exactly the amount of revenue at present credited to gathering lines under the supposition we are now considering, that they are to be transferred back to the trunk lines?

A. Yes, sir.

Q. And I will pass that point for the moment. There are some other charges that would have to be made against these lines from Hamlin to Braden and Eureka to Morgantown under the supposition you testified to would there not? Would there not be some charge for depreciation?

A. The charge for depreciation is in the items on this list.

Q. You mean included in the total of $297,794.48?

A. Yes, sir.

Q. I will ask you to look into that carefully and try to get the figures all straightened out by morning and I will take up another point?

A. Yes, sir.

Mr. Mathews: I want to give notice that we do object and will rely upon the incompetence and irrelevancy and impropriety of the testi-

mony now being called for from this witness. You remember I told you several times in regard to the accountants taking the
1312 figures, that I was not making any point of the witness on the stand having been the accountant who took those figures; that the testimony of the supervising accountant was not being objected to on that ground and would not be objected to, but I want to give notice that in my opinion the testimony which is evidently to be sought from this witness is not only inherently incompetent but this witness is not the proper person to make these theoretical estimates and give them in evidence.

Mr. Crawford: I think perhaps it might be just as well to adjourn now. It is a quarter past four and we cannot finish this afternoon.

Adjourned to Saturday, January 10, 1920, at 10 o'clock A. M.

Last Plaintiff's Exhibit 82.

1313 THE EUREKA PIPE LINE CO.

vs.

WALTER S. HALLANAN et als.

New York, January 10, 1920.

Met pursuant to adjournment.

Appearances:

For the plaintiff: Frank L. Crawford, Kemble White, Charles Powell, H. C. Dorworth.

For the defendants: S. B. Avis, W. Gordon Mathews.

FORREST M. TOWL resumed the stand.

Direct examination.

Continued by Mr. Crawford:

Q. Mr. Towl, when we adjourned yesterday afternoon I was asking you questions in regard to Plaintiff's Exhibit 81 and particularly at the moment in regard to what amounts if any should be deducted from the total of $809,577.45 which is shown in the column under "Gathering" in this exhibit, and you testified, if I recollect that on the assumption that the lines from Hamlin to Braden and Eureka
1314 to Morgantown were reclassified on your books as "Trunk Lines," there would be a transfer of expenses necessary, deducted from the gathering lines and added to the trunk lines, and you set these expenses forth in Plaintiff's Exhibit No. 82. That is correct, is it not?

A. Yes, sir.

Q. You also stated that it would be necessary for correct accounting to have a corresponding transfer of a portion of the revenue which at present is credited to the lines classified as gathering lines?
A. Yes, sir.
Q. And it was with reference to that that I was asking you?
A. Yes, sir.
Q. Will you enumerate again the amounts appearing in the column headed "Gathering" on this Plaintiff's Exhibit 81 which should not be retransferred, if such there be, out of the total of $809,577.45 on the supposition I have mentioned?

Mr. Crawford: If you wish to make any objection, Mr. Mathews, I will agree that it apply to this line.
Mr. Mathews: Counsel for the defendants object to the foregoing question and any answer thereto on the grounds and upon the reasons stated just before the closing on yesterday and set forth on pages 1405 and 1406 of the record, and for convenience of conducting the examination I would like it to be understood that such
1315 an objection goes to any and all questions *questions* along the same line which counsel may propound without restating the objection every time.
Mr. Crawford: That is satisfactory.

A. $11,186.00
3,571.99
1,488.41
372.09
5,951.68
892.75

And also
$567.97

This latter amount I should not have included in what would go to the gathering under the division that I made on Plaintiff's Exhibit 81.
Q. What do you mean by that? Why should you not have included it?
A. That should have been in the trunk lines and not credited to the gathering lines in Plaintiff's Exhibit 81.
Q. You mean that under the present classification that item of $567.97 stands to the credit of the trunk lines and should not have been entered here as being credited to the gathering lines?
A. It should all have been trunk lines.

Mr. Mathews: Under the present classification?
1316 The Witness: Under the present classification, the present division.

Q. In other words you mean to say that the entry of that item in the column under the head of "Gathering" in Plaintiff's Exhibit 81 was an error?
A. I considered that——
Q. Is that what you mean?
A. That is an error on my part.

Mr. Mathews: Just that one item, Mr. Crawford, of all of those that he just mentioned.

The Witness: $567.97.

Q. That is an error made in the preparation of Plaintiff's Exhibit 81?

A. Yes, sir.

Q. You are not now talking about this assumption that I have asked you to make and the deduction from that assumption?

A. No, sir.

Q. In other words Plaintiff's Exhibit No. 81 standing by itself ought to have the item of $567.97 transferred to the last column?

A. Yes, sir.

Q. And that would increase the total under the last column accordingly, would it?

A. Yes, sir.

1317 Q. And that of course would decrease the total of $809,577.45?

A. Yes, sir.

Q. Now for the purpose of making the transfer of revenue under the assumption that I have asked you about, you of course would have to deduct it with these other items from the total of $809,577.45 in order to get the correct amount of transfer?

A. Yes, sir.

Q. Will you add together the items that I have just enumerated as such as should be deducted, omitting that item of $567.97?

A. $23,462.90.

Q. I call your attention to Plaintiff's Exhibit 46 D, to the second table in that exhibit entitled "Operation of Oil Tanks", and under the head of "Trunk 274", to an item of $23,462.91, and I ask you whether the items of which you have just given the total are the items which are the corresponding entries to this item of Plaintiff's Exhibit 46 D?

A. Yes, sir.

Q. That is, those items which you have been totalling up are entries on the side of revenue credited to the gathering lines?

A. Yes, sir.

Q. And this is an entry of the same amount charged
1318 against the trunk lines?

—. —.

A. The one balances the other?

A. Yes, sir.

Q. I show you a table intended to show the results in percentages which flow from the assumed transfer of the lines from Hamlin to Braden and from Eureka to Morgantown. That is the transfer of those lines from the classification of gathering lines to the classification of trunk lines?

A. Yes, sir.

Mr. Crawford: I offer this in evidence and ask that it be marked Plaintiff's Exhibit 83.

Mr. Mathews: To the introduction in evidence of this specific

table as well as to this whole line of examination it is understood that counsel for the defendant is objecting.

Paper received in evidence and marked Plaintiff's Exhibit 83.

1319 Q. Looking at Plaintiff's Exhibit 83 there are two items in the first line reading across the page. Where do you get those from?

A. From Plaintiff's Exhibit 45.

Q. And is the amount of $1,471,324.38 the total expenses set down in that exhibit under the head of "Analysis of Gathering Lines Expenses"?

A. Yes, sir.

Q. And the other amount, $240,440.67 is the amount set down in Plaintiff's Exhibit 45?

A. Yes.

Q. As the total trunk lines expenses?

A. Yes, sir.

Q. On the next line under the head of "Expenses Hamlin to Braden and Eureka to Morgantown," where do you get the figures that are there set down?

A. Plaintiff's Exhibit 82.

Q. And the amount is the amount of total expenses as shown on that exhibit, is it?

A. Yes, sir.

Q. What have you done with that amount in this table?

A. Deducted it from the gathering lines revenue as shown on Plaintiff's Exhibit 45, and added it to the trunk lines revenues as shown on that exhibit.

1320 Q. That is on the assumption that these lines from Hamlin to Braden and Eureka to Morgantown should have been reclassified as trunk lines instead of gathering lines?

A. Yes, sir.

Q. With the result that the expenses of gathering lines are now decreased to $1,173,533.90, and that the expenses of trunk lines are increased,—of course I mean on the assumption that I have made?

A. Yes, sir.

Q. Increased to $538,231.15?

A. Yes, sir.

Q. What was the percentage of the total expenses which would result from that calculation and assumption?

A. The total expenses of the gathering lines would then be 68.6 per cent of the whole, and the trunk lines would be 31.4 per cent of the whole.

Q. As I recall we found that the percentage of the total expenses shown on sheets 1 and 2 of Plaintiff's Exhibit 45, which was assigned to the gathering lines, was about 86 per cent?

A. Yes.

Q. And it appears that by this transfer that percentage has been diminished to 68.6 per cent?

A. Yes, sir.

Q. That per cent of the sum total?

A. Yes, sir.

1321 Q. Come down to the next line of this Plaintiff's Exhibit 83, and you have there figures for revenues derived from Plaintiff's Exhibit 4, have you not?

A. Yes, sir.

Q. And also that appears in the second column of Plaintiff's Exhibit 81, does it not?

A. All in that amount opposite Exhibit 4 does not appear.

Q. The total set down here as the revenues credited to gathering lines on Plaintiff's Exhibit 4, which is here stated to be $2,058,859.25 appears or can be ascertained from Plaintiff's Exhibit 81, can it not, by adding together the four sub-totals of that column?

A. As far as the gathering lines are concerned, that could be ascertained.

Q. That is my question, as to the gathering lines?

A. As to the gathering lines, yes, sir.

Q. That is the sum of the four sub-totals that are shown in that column under Plaintiff's Exhibit 81?

A. Yes, sir.

Q. The total given under the head of "Trunk Lines" on this Plaintiff's Exhibit 83 of $610,833.18 is the difference, is it not, between the amount from revenue credited to gathering lines on this Plaintiff's Exhibit 83 and shown as you just stated in these elements at least on Plaintiff's Exhibit 81 by subtracting that amount

1322 from the total gross revenue from transportation as given on the second sheet of Plaintiff's Exhibit 4?

A. Yes, sir.

Q. So that these two items together as given on Plaintiff's Exhibit 83 opposite the words "Revenues as on Exhibit 4" aggregate the total gross revenue from transportation shown on Plaintiff's Exhibit 4, second sheet?

A. Yes, sir.

Q. Mr. White has called my attention to the fact that that is the same figure which appears in the first item on the third sheet of Plaintiff's Exhibit 45. Is that correct?

A. Yes, sir.

Q. Looking again at Plaintiff's Exhibit 83, the next item, what is that?

A. The receipt credited to the account of the line between Hamlin and Braden and Eureka and Morgantown, provided they were considered as trunk lines instead of gathering lines.

Q. And that is the amount which you say should on that assumption be transferred back to the trunk lines?

A. Yes, sir.

Q. Is that amount derived from the sum shown on Plaintiff's Exhibit 81 of $809.577.45 of items which you read off at the beginning of this morning's session?

A. Yes, sir.

1323 Q. What have you done on this table with that item?

A. I have added it to the trunk lines' revenues and subtracted it from the gathering lines' revenues.

Q. In so doing what do you get as the total of the revenue which would then be credited to the gathering lines as reclassified?
A. 47.7 per cent of the whole.
Q. And the amount would be what?
A. $1,273,312.67.
Q. And in like manner what would the amount be then credited to the trunk lines as reclassified?
A. The amount would be $1,396,379.76, or 52.3 per cent of the whole.
Q. You found yesterday as I recall that under the present classification the lines classified as gathering lines had credited to them about 77 per cent of the total gross revenue from transportation?
A. Yes, sir.
Q. And that compares, does it not, with the 47.7 per cent which would stand to the credit of the gathering lines as reclassified upon the assumption that I have made?
A. Yes, sir.
Q. Mr. Towl, look at Plaintiff's Exhibit 4. Is there any correction that you want to note in regard to Plaintiff's Exhibit 4?
1324 A. In that sheet there is in the last set of figures near the bottom of the page, for Marcus Hook and for Philadelphia, all of the revenues derived from those two items has been credited to the trunk lines.
Q. That appears, does it not, also on Plaintiff's Exhibit 81 in the last column, at the foot of the last column?
A. Yes, sir.
Q. All right, go on. When you say it has been credited to the trunk lines, where do you mean it has been credited to the trunk lines?
A. I mean that the total revenue from that movement which is from Cabin Creek up through Morgantown to the State line in the second instance, or up to Morgantown for Marcus Hook in the first instance, a large part of that revenue should have been, if it had been properly classified, classed as gathering line revenue.
Q. Where, on your books or in these papers?
A. On our books.
Q. In fact, it has been credited to trunk lines, hasn't it?
A. Yes, sir, to trunk lines.
Q. And it so appears on these exhibits?
A. On all these exhibits.
Q. When did you learn the fact as to how it was being carried on the books?
1325 A. At the time of the preparation of this Plaintiff's Exhibit 4, when I was separating out the revenue from the exhibit 4 to obtain the data on Plaintiff's Exhibit 81.
Q. Had you previously given any directions in regard to the disposition of that?
A. I thought I had given explicit directions, but the directions evidently were either improperly given by me or they were not understood by the party to whom I gave them.

Q. How much do you say of that amount ought to be credited to the gathering lines as they are at present classified, about how much? We will take an approximate amount?

A. By the item $30,561.89, and about 80 per cent, depending on the mileage used of the gathering system and the trunk lines system, of the item $5,730.11.

Q. That would amount to about $35,000, wouldn't it?

A. About $35,000, yes.

Q. In round figures $35,000?

A. Yes, sir.

Q. And you think that should be added to the other amount of revenue which now stands on the books as credited to the gathering lines?

A. Yes, sir.

Q. And have you formed any plan as to how that item or similar items will be carried in the future?

1326 A. In the future they will be divided up on that proper basis.

Q. If the amount of the total revenue from transportation which is credited to gathering lines as they are now classified is about 77 per cent. of the whole—and that was admitted subject to correction yesterday—this correction would add about one and one-half per cent. more, would it not, the total being $2,669,692.43?

A. In that neighborhood.

Q. Something over one per cent.?

A. Yes, sir.

Q. So that it would make the portion of the total gross revenue from transportation now credited and which you say should be credited to the lines classified as gathering lines somewhat over 78 per cent. of the whole?

A. Yes, sir.

Q. And in like manner it would change the percentages on Plaintiff's Exhibit 83 and the amounts in the same general proportion, would it not?

A. It would have the effect due to the amount on Plaintiff's Exhibit 83.

Q. It would increase the revenue to be credited to gathering lines something over one per cent. in that case, would it not? It would change this 47.7 per cent. to something like 49 per cent.

1327 would it not?

A. Yes, sir.

Mr. Crawford: I wish now to offer in evidence another extract from Plaintiff's Exhibit 79 for Identification, the whole of page 56 and the first three lines of page 57, and I ask that that be marked Plaintiff's Exhibit 79-B and request the Court to read this passage in connection with the passage introduced as Plaintiff's Exhibit 79-A.

Mr. Mathews: I would suggest and request that the stenographer in so inserting make it show italics when it appears in the manual in italics.

Mr. Crawford: Certainly, no objection to that.

Received in evidence and marked Plaintiff's Exhibit 79-B.

1328 Q. Mr. Towl, testimony has been given here and tariffs introduced in relation to shipments of Pennsylvania grade oil from various minor points mentioned on certain of the I. C. C. tariffs filed by the Eureka Pipe Line Company jointly with other carriers. I refer particularly to the following points: Bell,
1329 Brice, Butcher, Bula, Carson, Downs, Gibson, Hoffman, Jake's Run, Littleton, Murray Scott—all in West Virginia. Also Core in the same State. I want to ask you whether, after oil has been received into the lines of the Eureka Pipe Line Company from any one of these stations, there is any refinery in West Virginia to which that oil could be delivered, having in mind the course of the oil through the Eureka lines as the business is now carried on and has been carried on in recent years?

A. No, sir.

Q. What has become of all the oil which has ever been received by the Eureka Pipe Line Company into its line at any of those stations?

A. Passed out of the State.

Q. You have been, I think you said, President of the Eureka Pipe Line Company since 1911?

A. Yes, sir.

Q. During that entire period very large amounts of Pennsylvania grade oil have been received into the pipes of the Eureka Pipe Line Company from fields in West Virginia and similar large amounts from connecting carriers?

A. Yes, sir.

Q. A certain amount of that, as already testified, has been delivered to certain refineries in West Virginia and a very, very
1330 small amount for local use, I think, at Downs. I want you to tell me in a general way what is the largest percentage of any of that Pennsylvania grade oil which has been delivered at any time or any one year to any one or to all refineries or others within the State of West Virginia?

A. From 1911 to 1917 the largest percentage was a little less than 14 per cent. in 1917. I haven't made up the figures for 1918.

Q. What is the smallest percentage?

A. The smallest percentage was a little over 6 per cent.

Q. Except for the Pennsylvania grade oil coming within the description of my last questions, which happens to be at the moment in the system of the company, what has become of all in excess of this deduction of somewhere between 6 and 14 per cent. annually?

Mr. Mathews: I feel constrained to object to further questioning the witness along this line, which not only should have been brought out on his direct examination, but which has been brought out over and over by this witness and by others. It seems to me that exactly the same thing is now being gone over again.

Mr. Crawford: This is the only question I am going to ask on this. I am not going to pursue it any further.

A. It is all passed out of the State into Pennsylvania.

1331 Q. Just one question about Somerset oil. Is there any refinery in Kentucky with which the lines of the Cumberland Pipe Line Company has a connection?

A. No, sir.

Q. So that there is no refinery in Kentucky to which any Somerset oil once delivered to the Cumberland by producers or others, could be delivered by it?

A. No, sir, except car shipments.

Q. There is testimony given, I think by Mr. Kenney, that a number of years ago there was a certain amount of Somerset oil delivered to I think the Parkersburg Refinery, and I will ask you now whether with that exception and with the exception of course of the Somerset oil which happens at the moment to be in the system of your company, what has become of all the Somerset oil that the Eureka Pipe Line Company has received from the Cumberland Pipe Line Company?

A. All of the Somerset oil received from the Cumberland Pipe Line Company with the exception of a little less than 25 barrels has been delivered on through the Eureka sys em into Pennsylvania.

Q. That has been true since you were president?

A. Yes, sir.

Q. And what about the 25 barrels?

A. 25 barrels were used as fuel by the Eureka Pipe Line Company.

1332 Mr. Crawford: There seems to be some doubt as to whether the tariffs which have been considered in the examination of witnesses have been regularly offered in evidence, though it is the impression of counsel for the plaintiff that that has been done. We now offer in evidence all the tariffs which have been marked for identification and request that they be marked as exhibits with the same numbers as the identical numbers, with the understanding that the corresponding copies of the tariffs which are annexed to the original bill may be marked with the same exhibit numbers and be read instead of the identical copies used on the hearing, and that only one set of these tariffs need form a permanent part of the record.

Mr. Mathews: We certainly do not want them duplicated in the record.

Q. I call your attention to Tariff No. 145, which is Plaintiff's Exhibit 26, tariff filed by the Eureka Pipe Line Company in connection with the South West Pennsylvania Lines and the National Transit Company for transportation from various small stations in West Virginia via Bear Creek, Pennsylvania, and Franklin Station, Pennsylvania, and I direct your attention to the second paragraph of the regulations on the back of the tariff wherein the minimum amount for shipment of 25,000 barrels is mentioned, and that is mentioned as from Bear Creek. I ask you now what is the distance from Bear Creek to Franklin, about?

A. Oh, I would say approximately twenty-five or thirty miles.

Q. How is oil transported between those two points, I mean
1333 in respect to the number of pipes, the diameter, etc.?

A. Through a six-inch pipe.
Q. A single six-inch pipe?
A. Yes, sir.
Q. Has that six-inch pipe in that distance any connections or any other line coming in?
A. No, sir, Bear Creek Station pumps direct to Franklin.
Q. From what source, if at all can contamination arise in the transportation of oil between those two points?

Mr. Mathews: Mr. Crawford, I have a real reluctance to do it, but I feel constrained to object to further going with this witness into matters that have been fully gone into, in some cases more than once heretofore. The record is so tremendous and is so encumbered by exhibits and duplications, of some items anyhow, that I feel compelled to object at this point.

Mr. Crawford: I am extremely glad to have you object, Mr. Mathews, because it gives me an opportunity to place my reasons upon the record, which are, that you or your colleagues have attached the amounts of the minima given in various shipments, which vary, as you pointed out from 1,000 barrels to 100,000 barrels, upon the supposition apparently that the conditions were precisely equal, and I have had no opportunity until this moment to reply or to ex-

1334 plain, rather, by a witness, how different the conditions are and the reasons for those differences in the amounts of the minima. This is absolutely in my judgment proper redirect examination, because you brought those points out yourself, or your colleague did, upon cross examination. I do not think that any court in the land would not allow me to redirect on that point.

Mr. Mathews: This same witness was on the stand early in December and you then had, as I thought, the fullest opportunity of redirect several times.

Mr. Crawford: No, this is the only time I have ever asked him this on redirect.

Mr. Mathews: I say, you had the opportunity to fully examine him at that time.

Mr. Crawford: On his direct examination, when those issues had not been raised. I have never redirected him until yesterday afternoon. You cross examined him and he left the stand while still under cross examination.

Mr. Mathews: Probably that is correct.

Mr. Crawford: But at any rate do not let us engage in controversy. Make your objection. Of course I am going to put it in. I think I am entitled to it.

A. The contamination that is spoken of as columnar, one oil preceding or following another.

Mr. Mathews: Surely that question of contamination re-

1335 sulting from columns adjoining has been most extensively gone into.

Mr. Crawford: Well, not in connection with your attack on the amounts of these minima, but if he said the same thing on the

record once,—he could not have said the same thing, because it never was asked him.

Mr. Mathews: In answer to the question asked him just now, he has said that thing over and over again.

Mr. Crawford: Put your objection on the record.

Mr. Mathews: I have done so.

Mr. Crawford: Then do not let us have any controversy about it.

Mr. Mathews: We cannot have a controversy about it, because I am sure you will admit that if the last question is read to you.

Mr. Crawford: Not at all. In connection with my question, he has never answered in connection with that question.

Mr. Mathews: He has testified to exactly the same thing word for word.

Mr. Crawford: You cannot limit it in that way to this particular set of conditions.

Q. I show you Plaintiff's Exhibit 28, being tariff I. C. C. No. 146, joint tariff issued by the Eureka Pipe Line Company with other carriers from minor points in West Virginia via Bear Creek to Olean, New York, and I call your attention to a similar provision there in the second regulation providing a minimum of 25,-
1336 000 barrels from Bear Creek and I ask you what the distance is approximately from Bear Creek to Olean?

A. Approximately seventy-five miles.

Q. And how is the transportation carried on between Bear Creek and Olean, as to pipes and number and diameter?

A. It is a single six-inch system used for this oil.

Q. You mean a single six-inch pipe?

A. Yes, sir.

Q. And does it connect with any other pipe on the way?

A. It can be——

Q. Does it in practice? Answer the question?

A. There are stations at Crown and Cane on the way to Olean.

Q. Stations of what?

A. Other pumping stations.

Q. No other lines come in?

A. No, no other lines come in. The line at Franklin goes out of this same line.

Q. Plaintiff's Exhibit 26, which is Tariff I. C. C. No. 148——

Mr. Mathews: I want the record to show an objection to this whole line of questions relating to these tariffs and what they show as to the number of barrels that would be sent forward on a tender. If this whole subject now under consideration is to be pro-
1337 longed I want an agreement that my objection is to go to each question and each answer.

Mr. Crawford: I am perfectly willing to stipulate that, but please state the grounds of your objection so that if necessary for me to go more into detail or pursue a different line I want to do it. I want to get this thing in legally. Will you be good enough to state the ground of your objection?

Mr. Mathews: Yes, certainly. I object on the ground it has

been thoroughly gone into one or more times on direct examination, on a former examination of this witness, and it seems to me it is clearly a repetition.

Mr. Crawford: That is the only objection you make, is it?

Mr. Mathews: Yes, sir.

Q. Plaintiff's Exhibit 26, which is Tariff I. C. C. No. 148, issued by the Eureka Pipe Line Company in connection with the South West Pennsylvania Pipe Lines from various points in West Virginia via Ewings, Pennsylvania, to various points in Pennsylvania, provides in the second regulation for a minimum of 1,000 barrels at Ewings, does it not?

A. Yes, sir.

Q. What is the approximate distance from Ewings to those points which are named as destinations?

A. Approximately twenty miles, fifteen or twenty miles.

Q. And what is the character of the transportation between those points? I mean the physical construction of the pipes

1338 first?

A. It is all handled from Ewings on in the South West Pennsylvania Pipe Lines system devoted to handling that kind of oil.

Q. You mean handling Pennsylvania grade oil?

A. Handling Pennsylvania grade oil.

Q. And there is no other kind of oil, no other grade of oil handled in the same pipes?

A. It is possible to handle other grades of oil in those same pipes for short distances, but as a general thing there is no other oil handled through those pipes.

Q. What is the distance approximately from Morgantown to Bayway, or Bayonne?

A. I would say approximately three hundred and twenty-five miles.

Q. And referring to Pennsylvania grade oil which is piped, as I understand you and other witnesses through two pipes constituting systems No. 1 and through some smaller subdivision in the course of the Southern Pipe Line Company coming up to Millway, how is that Pennsylvania grade oil transported beyond Millway?

A. It is transported beyond Millway in the lines of the National Transit Company and the lines of the Tuscarora Pipe Line Company, one batch of oil following another.

1339 Q. In other words what has been described as the columnar movement?

A. Yes, sir.

Q. At page 949 of the minutes of this testimony taken on your cross-examination, occurs:

"Q. Then so far as the Prairie Pipe Line Company's lines are concerned there is no danger of contamination by the admixture of Midcontinent oil with another grade, is there?

"A. Where?

"Q. In the lines of the Prairie Pipe Line Company?
"A. No."

Will you state again what was the easterly terminii of the Prairie Pipe Line Company?

Mr. Avis: That has been fully gone into.

Mr. Crawford: The Court cannot go back to the beginning of the record to pick out a thing. I want to make it clear now in order to make the point that I am after.

A. Griffith, Indiana and Wood River, Illinois.

Q. Following the language of counsel for the State I ask you whether in the case of shipments made through the Prairie there is any danger of contamination by the admixture of Mid-Continent oil with any other grade after the shipments leave the lines of the Prairie Pipe Line Company on their way to the eastern sea-
1340 board?

A. Yes, sir.

Q. Will you state at what points such contamination may take place?

A. Martinsville, Illinois; the lines of the Illinois Pipe Lines Company through Illinois and Indiana and Ohio; the lines of the Indiana Pipe Line Company through Indiana from Griffith east, the lines of the Buckeye Pipe Line Company across the State of Ohio; the lines of the South West Pennsylvania Pipe Lines; the lines of the Eureka Pipe Lines; there is no chance of mixture except the columnar mixture as that oil is all handled through one set of pipes.

Q. No chance where, do you mean?

A. In the lines of the Eureka Pipe Line Company. There is a chance in the lines of the Southern Pipe Line Company, columnar mixture.

Q. When you get beyond the Southern, what is the fact?

A. Then the lines beyond the Southern of the National Transit Company and the Southern Pipe Line Company's lines to Philadelphia,—it is handled in batches. The lines of the National Transit Company from Tuscarora east to Bayonne, Bayway and Claremont is handled in batches.

Q. You meant to say there is a chance of contamination in each of those places?

A. In each of those systems, yes, sir, a number of chances.
1341 There is also a number of chances in the other systems going through the other routes to the seaboard.

Q. When you say other routes you mean beyond Millway, Pennsylvania?

A. No, sir; the Prairie Oil goes through only the National Transit Company, and the Tuscarora east of Millway.

Q. When you speak of other routes to the seaboard, what do you mean?

A. As to the Prairie oil, in passing the lines of the Eureka Pipe Line Company.

Q. You mean to say that some of the Mid-Continent oil that comes over the Prairie does not go through the Eureka at all?

A. A large part of it.

Q. How does it go generally?

A. It goes through the lines of the Illinois Pipe Line Company and the Tuscarora Oil Company to Bayonne and Bayway, and part of it goes through the lines of the Buckeye Pipe Line Company, the Northern Pipe Line Company, the New York Transit Company, and a branch of the National Transit Company to Philadelphia.

Q. What you mean then by referring to other routes is those routes generally?

A. Those are the general heads.

1342 Q. You mean to say as to all the systems you have enumerated, there is opportunity for contamination of Mid-Continent oil?

A. Yes, sir.

Mr. Crawford: Captain Avis and Mr. Mathews, I ask you to look at page 912 of this witness' testimony, down just below the middle of the page. The question reads was there any specific reason for the delays in the tanks?

The Witness: Yes, sir.

Mr. Crawford: That was my question, and I am quite sure that I said "The tenders" and I think the context shows that. I would like to have that corrected, but if you are unwilling to do it by a mere correction I will ask the witness about it.

Mr. Mathews: I don't know what the witness stated. I think you had better ask him the question over.

Mr. Crawford: It is not a question about what the witness understood. The question is what the stenographer understood.

Mr. Mathews: It might be both. The witness might have understood and made his answer to the question involving tanks, or he might have made it involving tenders.

Mr. Crawford: I did not say tanks. I want to place upon the record my statement as counsel that I am quite positive that my question was, "Was there any special reason for the delay in the tenders," and that that is shown by what precedes, but I will

1343 clear the matter up by asking the witness:

Q. Mr. Towl, at page 912 the following appears in the minutes:

"Q. Was there any special reason for the delay in the tanks?"

"A. Yes, sir."

Please look at the minutes and the testimony immediately preceding and tell me whether you understood me to be asking in regard to delays in tanks, or if not, what you did understand when you answered that question?

A. I answered the question understanding the word "tenders."

Mr. Mathews: It would save coming back if the witness would also say whether there was not a corresponding delay in tanks.

The Witness: No, sir.

Mr. Mathews: There is bound to be unless they were sent on without a tender, isn't that correct?

The Witness: No, sir, the oil was moving all the time.
Mr. Crawford: Is that all for the minute, Mr. Mathews?
Mr. Mathews: Yes.

Q. I want to ask you one more question: In Plaintiff's Exhibit 69, under the head, "Actual taxes paid for the year 1919" there appears an item opposite, "General Property Tax" of $224,-
1344 702.01, and it was testified by Mr. Whitehead yesterday that that amount had not actually been paid as yet, or had not at any rate when he examined the books. I understand that it had not been paid to yesterday, is that so?
A. Yes, sir.
Q. What is your information about it?
A. I have no information that it has yet been paid. There are usually a number of clerical errors in the bill when it is received and it takes quite a lot of correspondence to get them correct. It generally takes up almost to the full limit of the time to have them corrected.
Q. Is it the intention of the company, of course, to pay that?
A. Yes.
Q. And when paid out of the revenue of what year will it be paid?
A. It will be paid before we close our books for the year 1919.
Q. And charged against the revenues of that year?
A. The revenues of 1919.

Mr. Avis: By that does he mean the calendar year or the fiscal year?
The Witness: The calendar, which is our fiscal year.
Mr. Crawford: That is all for the present.
Mr. Mathews: I want to formally move the Court to strike
1345 out and exclude all the testimony of this witness including all exhibits filed with his testimony based upon the assumed but not existing transfer from gathering lines to trunk lines, which was stated by counsel and testified to by the witness.
Mr. Crawford: Your motion is limited to just that part of his testimony? Your language is so general that it might seem that you intended to move to strike out all his testimony.
Mr. Mathews: I said all of his testimony relating to it. I intended to say that.
Mr. Crawford: I think that is rather ambiguous, and you can clear it up by putting a limitation on it.
Mr. Mathews: I hardly know how to clear it up except substituting for the word "based" the words "relating to." The purpose of the motion is to cover the same line of testimony as to which a specific objection was placed on the record when the witness commenced to testify.
Mr. Crawford: Your objection is limited to so much of his testimony and such of the exhibits produced by him as I have produced, assumed transfer of lines.
Mr. Mathews: My motion to strike out is so limited, yes.
Mr. Crawford: I did not mean objection, I mean your motion?
Mr. Mathews: Yes.

1346 Cross-examination.

By Mr. Mathews:

Q. Mr. Towl, if you are able to and will answer a few questions that I want to ask you categorically, I do not think there are more than three that I think necessary on this recross-examination?

A. I will do the best I can.

Q. You testified with reference to item $537.97 appearing on Plaintiff's Exhibit 81 in the column, "Gathering" and explained that it should be properly placed in the column, "Trunk," did you not?

A. Yes, sir.

Q. I ask you whether in Plaintiff's Exhibit No. 83, as made up, whoever made it has not failed to make that transfer and include this item of $567.97?

Mr. Mathews: I want to make the two exhibits agree, Mr. Crawford, which I do not believe they do.

Mr. Crawford: If you are correct I thank you for the correction. I was following the witness' computations.

A. No, sir, they have not included that. The amount will not agree with the $809,577.44 because that $567.94 goes in with it.

Mr. Crawford: What do you mean by that?

The Witness: That this is proper.

Mr. Crawford: May I ask a question?

1347 Mr. Mathews: Yes, we want to get it clear.

By Mr. Crawford:

Q. You mean, don't you, that the item of $567.97 as appears in Plaintiff's Exhibit 81 should have been deducted from the total of $809,577.45 in order to make the Plaintiff's Exhibit 81 correct?

A. Yes, sir.

Q. I mean correct as of the present conditions?

A. Yes, sir.

Mr. Mathews: On your assumption, does not Plaintiff's Exhibit 83, as it stands, show that $567.97 is gathering instead of trunk lines revenue?

Mr. Crawford: I do not think so. May I ask two or three questions to straighten it out?

Mr. Mathews: Yes.

Mr. Crawford: I do not think we shall greatly disagree. I am willing to leave that in any way you like. Mr. Dover may be correct. I am too tired now to say very much about it of a certainty. If you are correct I have no objection to making the correction in the exhibit. The amount is so small it would not make any difference. I do not mean to say you should abandon it. I would be willing to concede it if after a cool head and when I am not so tired I see that it is as Mr. Dover has said. I hesitate to put my word against

his, because that is his business, to be an expert in figures,
1348 and it is not mine. It does not seem to me at present that that is the case. It seems to me at present to be all right, and Mr. Towl has so stated.

Mr. Mathews: I think you will find as a matter of addition and subtraction that it was not properly carried into Plaintiff's Exhibit 83, and that the total revenues on Plaintiff's Exhibit 83 under the head of "Gathering Lines" ought to be credited by being decreased in the amount of $567.97, and the revenues under "Trunk Lines" ought to be increased to the same amount.

Mr. Crawford: Let me say that if upon close inspection that appears to be the case, we will cheerfully admit the fact and consent to a correction of the exhibit, as we wish to have it accurate, of course, and we thank counsel for the State for calling our attention to the possible error.

By Mr. Mathews:

Q. Mr. Towl, I want to ask you whether a part of the oil covered by the revenue which you have undertaken upon your assumption to transfer from gathering lines to trunk lines, does not move through part of the system classified by you as gathering lines?

Mr. Crawford: You mean under the present arrangement?

Mr. Mathews: Under the assumption.

Mr. Crawford: Under the assumption or under the present
1349 arrangement?

Mr. Mathews: Under the assumption.

A. The assumption is that part of the system considered as gathering lines is transferred and considered as trunk lines?

A. Well, possibly I have not expressed myself clearly. Does not a part of the oil which moves under the present arrangement, in part, between Hamlin and Braden, and Eureka to Morgantown, also pass through part of your present gathering lines?

A. It passes through these main lines, and the main lines are part of our gathering lines which we have segregated.

Q. Does not some of that oil pass through gathering lines as they now exist before it leaves that part between Hamlin and Braden, and Eureka and Morgantown?

A. I believe there would be a very small amount or very small part that would pass through those small lines to get into this main line system; the oil coming in at other points than Eureka, from Ohio.

Q. This part of the oil that is gathered in the State of West Virginia at present moves through the same sections between Hamlin and Braden, and Eureka and Morgantown?

A. Yes, sir.

1350 Mr. Mathews: That is all of the cross examination.

Mr. Crawford: No further questions.

(Witness excused. Signature waived by consent of counsel.

1351 VERNON S. SWISHER resumed the stand.

Cross-examination.

By Mr. Mathews (continued):

Q. Mr. Swisher, there is just one item that I have been trying to get straight in my mind for some days, and I believe that I have it, but I want to ask you to get it into the record. You recall, of course, the item of $23,462.91 which appears on Plaintiff's Exhibit 46-D under the head, "Storage Service." You have that exhibit before you?

A. Yes, sir.

Q. You recall also that on your former examination in this case you filed a statement of the credit balances on the production books of your company produced in West Virginia and unconsigned at the close of each month during the period in question, found at page 543 of the minutes. This table has columns in it headed, "Total", also "Not subject to so-called storage charge", also "Subject to so-called storage charge", and the final column is headed, "Amount charged". I ask you to look at the final total to the final column of the amounts charged for "so-called storage" and to say whether that table does not aggregate $6,003.99?

A. Yes, sir, it does.

Q. I will ask you, Mr. Swisher, to take Plaintiff's Exhibit 45 on the third sheet, and you will find under the heading, "Other Income" a heading "Gathering and Trunk Line Adjustments", "$29,-

1352 466.90." When you have made this examination I want you to state if you are able to whether this item "Gathering and Trunk Line Adjustments, $29,466.90" does not represent the aggregate of the two items to which your attention has just been called, and whether the last item is not intended to be these two items consolidated?

A. It undoubtedly is the case, although I did not prepare this table.

Q. Mr. Swisher, the evidence apparently shows that this item of $23,462.91 was included in the item of "Tariff Revenues, $2,669,-692.43", and it also appears in the item "Other Income" as being embraced in the item of $29,466.90. The $23,462.91 appears once on Plaintiff's Exhibit 46-D as an expenditure for operation of oil tanks under the head of "Storage Service". Is there a corresponding entry anywhere as to a second expenditure of that sum which appears to appear twice in the income of the company?

A. That amount, $23,462.91, is only a bookkeeping entry as between the trunk and the gathering. The trunk line expense is charged to that amount and the gathering line revenue was credited. That is all. It appears but once in the books.

Q. But it seems to appear twice in the receipts?

A. I do not grasp where you state it appeared twice, if you will point it out?

Q. Yes, certainly. I understood it to be clearly testified to
1353 that this item of $23,462.91 appears in Plaintiff's Exhibit 45, third sheet, "Tariff Revenues, $2,669,692.43," and I also understood you to express no doubt that it also appears under the head of "Other Income", as part of the item of $29,466.90?

A. It is undoubtedly part of the income, $29,466.90, but it is not part of the $2,669,692.43.

Q. But are not the particular items which make up this $23,462.91 as set forth on Plaintiff's Exhibit No. 81, which I now hand you, taken and necessarily taken to make the total, "tariff Revenues, $2,669,692.43"?

A. This Plaintiff's Exhibit 81 I believe was to explain the entry of $23,462.91. Really why it should be adjusted, as I understand it——

Mr. Crawford: I will not object. In fact, I would prefer that you would just quote to this witness the testimony of Mr. Towl upon this point, because what we both want *os* to get the facts clear in the shortest possible time. If you will just state to the witness what Mr. Towl stated, I have no objection to your doing so.

Mr. Mathews: I cannot undertake to do it unless it is read.

Mr. Crawford: Will you let me state it in a question? I
1354 don't want to interrupt you.

Mr. Mathews: I have no objection to that.

Mr. Crawford: What I want to state to him is the summary of what Mr. Towl said on that point.

Mr. Mathews: I have no objection to your stating your idea of the summary.

By Mr. Crawford:

Q. Mr. Swisher, Mr. Towl testified, as I understood him, that certain items which are mentioned in the column of Plaintiff's Exhibit 81 headed "Gathering" and which when added up aggregate exactly the amount of this item of $23,462.91, represented the same transaction, being the credit under those heads to revenue for the account of gathering lines. Mr. Mathews is asking you about that and also about this other item of "Gathering and trunk line adjustments". If you do not agree with Mr. Towl, I do not want you to let Mr. Mathews make you say so, but we are in a great hurry, and I want you to understand just what has been testified to here?

A. The $23,462.91 of course is a part of the total tariff revenues. $2,669,692.43.

Mr. Mathews: That is what I understood Mr. Towl to say.

Mr. Crawford: Yes, that is what he stated.

The Witness: And that is the grand total between trunk and gathering, and there has been an adjustment between the trunk lines and back again, transferring $23,462.91 to trunk lines'
1355 revenue, and an expense against the trunk lines. If you wipe out the expense against the trunk lines, and this reve-

nue, it would balance the matter. There was no additional revenue on account of that entry between the whole system. I believe now possibly I understand that. That amount is really in the $29,466.90, but against that there is an expense, a corresponding expense.

Mr. Crawford: Where?

The Witness: Against the trunk lines.

Mr. Crawford: Where is it entered?

Mr. Mathews: I think you read the figure wrong. Didn't you say twenty-nine thousand and something?

The Witness: $23,462.91, I should have said.

Mr. Crawford: I think another question would bring the issue out more clearly in the witness' mind. He does not understand what we are talking about. May I ask it?

Mr. Mathews: Yes, sir.

Mr. Crawford: If, before it is answered, you prefer not to have it answered, I will withdraw it.

By Mr. Crawford:

Q. Mr. Swisher, you now say that this amount $23,462.91, of sundry items aggregating that amount, was included in that item of "Total gross revenue from transportation" which is at the top of page 3 of Plaintiff's Exhibit 45, is that correct?

1356 A. Yes, sir.

Mr. White: Yes, sir.

Q. So far we agree, do we?

A. Yes, sir.

Q. There is an item on the same page, "Gathering and trunk lines adjustments, $29,466.90," which I understand you to say is made up of an item of $23,432.91 and of some other item which you testified to, and Mr. Mathews has said to you in substance—and I ask to be corrected if I am wrong—that that appears to be inserting that amount as revenue twice, and Mr. Mathews wants to know if that is not an error?

Mr. Crawford: Am I right, have I stated your question correctly?

Mr. Mathews: In part. What I want to know is, I know once where it is charged as an expense, although that has been explained to be a book entry and not a real expense; but if it appears twice in the revenues there should be two corresponding entries in expense somewhere, shouldn't there? Else the total revenues would be greater than they appear on this third page of Plaintiff's Exhibit 45. I will recall to you that it has been testified that this $23,462.91 was not an actual receipt, but a bookkeeper's entry.

The Witness: It appears in the revenue properly once and the second time it appears, it is adjusted by corresponding ex-

1357 pense.

Q. Where is that corresponding item of expense? Where does that appear?

A. It appears on Plaintiff's Exhibit 46-D, page 10, "Trunk Line

Expenses", in one of the items making up, "Operation of oil tanks."

Q. Is that the only place it appears as an expense?

A. I think so, yes sir.

Q. I can understand how that would be correct if it were an actual cash receipt, but if as testified it was a mere bookkeeping entry and adjustment carried each month making that aggregate then it seems to me that it appears twice in the income of the company and is only accounted for once in the expenses. I am dealing with matters that I am not very familiar with in putting these questions, but I am doing so on authority that I consider expert?

A. It is properly part of the rate first, and it appears properly once.

Q. You never actually received it even once, did you?

A. Once is what we received it, yes, sir.

Q. As a storage charge?

A. No, sir, as part of the transportation.

Mr. Mathews: I believe that is as far as I can get on that item.

Mr. Crawford: No questions.

1358 Mr. Mathews: Are we through?

Mr. Crawford: We are through, except this stipulation.

It is stipulated by the parties, by their respective counsel (in lieu of plaintiff otherwise proving the said facts) as follows:

(*a*) That during the year ending June 30, 1919, the plaintiff was not and has not since been engaged in the business of transporting natural gas, except as hereinafter stated, or the products or dis illates of crude oil or petroleum, or natural gas, or both, but that the plaintiff did during said year ending June 30, 1919, transport by pipe lines ranging in length from a few feet to about five and one-half miles in length natural gas purchased by it and used by it for heat, light and fuel in and about its pumping stations, (which number in the neighborhood of sixty-eight), which said lines of pipe were and are service lines and wholly disconnected from each other, and not toge her forming an entire connected system;

(*b*) That by one other gas line, more than ten but less than twelve miles in length, plaintiff did, during the said period, transport gas, produced in the State of Pennsylvania and purchased by it at the well and delivered it by pipe line at the West Virginia-Pennsylvania State line, and then conveyed by it through a line of pipe to its Morgantown station and used by it for heat, light and

1359 fuel, the flow of such gas being continuous from the well to said Morgantown station, and that the to'al amount or quantity of the last referred to gas, for the year ending June 30, 1919, was one hundred and twenty six million nine hundred and eighty-two thousand (126,982,000) cubic feet.

Mr. Crawford: We are through except that we want to reserve the right to put in any documents, which however will if offered be offered for the convenience of counsel, I mean to say presumably at Charleston some time between now and the hearing.

Mr. Mathews: There is no objection to that. I understand that is in accordance with what you wrote to Captain Avis before I came here, but if any further documents are offered I would be glad to re-

ceive copies in sufficient time before the hearing to examine them thoroughly. The whole of the intervening time between now and the hearing is not available to us.

Mr. Crawford: How would it do for me to add to that, that we will agree that any such documents will be offered at least five days
1360 before the hearing at Charleston, West Virginia, and at some time convenient to counsel for the State. I do not know at this moment that there is any, but this is just simply a precaution, that is all.

Mr. Avis: You will let us have copies of them?

Mr. Crawford: Yes. As far as I know they will not require the production of any witnesses, and if they do the witnesses will be produced at Charleston.

Mr. Mathews: By "documents" do you mean official State records or anything of that sort, or more of these schedules and exhibits filed here?

Mr. Crawford: It might be either, but certainly I should not expect to put in anything,—or rather I limit myself and it will not be anything that will require any extended examination of any witnesses. I will say that.

Mr. Avis: I hardly think there is any chance for us to have a conference next week.

These depositions are directed to be closed, certified, and filed.

1361 STATE OF NEW YORK,
County of New York, ss:

I, Robert A. Huddleston, hereby certify that the foregoing depositions of John J. Kenney, Vernon S. Swisher, W. Dixon Ellis, J. W. Breiner, Lemuel W. Young, Forrest M. Towl, Chauncey B. Ware, Reid D. Beardsley, George F. Whitehead, John W. Johnson, were duly taken by and before me pursuant to the notice hereto attached, on the 17th day of November, 1919, and the subsequent days shown by the records herein, to be read on behalf of the plaintiff in and on the hearing of that certain suit in chancery pending in the Circuit Court of Kanawha County, West Virginia, in which the Eureka Pipe Line Company, corporation, is plaintiff, and Walter S. Hallanan, State Tax Commissioner, and Edward T. England, Attorney-General of the State of Virginia, are defendants; that the said depositions were taken in shorthand characters by Charles W. Elmer, Raymond F. Martin and George C. Sutton, and that said Charles W. Elmer, Raymond F. Martin and George C. Sutton were each duly sworn before proceeding to take the same; and that such stenographic notes have been properly transcribed, and that the foregoing is the transcription thereof; that said witnesses were each duly sworn and that the signatures of the witnesses to their respective depositions were waived; that I am not related to any
1362 of the parties to such suit, nor interested therein; that the stipulations appearing in the foregoing transcription were made as therein set forth, and that the several exhibits attached

thereto were introduced and filed as therein stated as enumerated in the index hereto annexed and initialed by me.

Given under my hand and seal this 13th day of January, 1920.

ROBERT A. HUDDLESTON,
Notary Public, Kings County.

Kings County Clerk's No. 167.
Register No. 258.
Certificate filed in New York County.
New York County Clerk's No. 472.
Reg. No. 10346.
Commission Expires March 30, 1920.

1363 The People of the State of New York, By the Grace of God Free and Independent, to all to Whom these Presents Shall Come, Greeting.

Know ye, That we have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint Robert A. Huddleston of the Boroughs of Brooklyn, (for at term of two years ending March 30, 1920), to be Notary Public in and for the County of Kings, hereby giving and granting unto him all and singular the powers and authorities of to the said office by law belonging or appertaining:

To have and to hold the said office, together with the fees, profits and advantages to the same belonging, for and during the time limited by the Constitution and Laws of our said State.

In Testimony Whereof, We have caused these our Letters to be made Patent, and the Great Seal of our said State to be hereunto affixed.

Witness, Charles S. Whitman, Governor of our said State (with the consent of the Senate), at our City of Albany, the 25 day of Sept. in the year of our Lord one thousand nine hundred and 18.

[G. S.] WM. A. ORR,
Secretary to the Governor.

Attested by
C. W. TAFT,
2 *Dep. Secretary of State.*

(Executive Law.)"

Endorsed Filed Sept. 27, 1918.

Signature of Notary Public, whose term of office will expire on the 30th day of March, 1920.

(Signed) ROBERT A. HUDDLESTON.

STATE OF NEW YORK,
County of Kings, ss:

I, William E. Kelly, Clerk of said County, and Clerk of the Supreme Court of said State for said County, do hereby certify that Robert A. Huddleston has been appointed Notary Public for the

County of Kings, and that the foregoing is a correct copy of the original appointment of said Notary Public, on file in my office.

And further, that the said Notary Public has qualified as such. That I am well acquainted with the handwriting of such Notary Public and verily believe that the signature above written is genuine.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, this 19th day of November, 1919.

[Seal Kings County.] WM. E. KELLY,
Clerk.

Certificate filed with County Clerk New York County.
Date Oct. 2, 1918.

1364 To the Eureka Pipe Line Company, a Corporation:

You will please take notice that on Saturday, the 24th day of January, 1920, at the law offices of McClintic, Mathews & Campbell in the Citizens' National Bank Building, Charleston, Kanawha County, West Virginia, between the hours of 9 o'clock in the forenoon and 6 o'clock in the afternoon, the undersigned will take the depositions of Waller C. Hardy, William Freudenberger, et als., to be filed and read on behalf of the defendants in a certain suit in chancery pending in the Circuit Court of Kanawha County, West Virginia, wherein you, The Eureka Pipe Line Company, a corporation, are plaintiff, and the undersigned, Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, are defendants.

If, for any reason, the taking of such depositions shall not be commenced and completed on the day and between the hours aforesaid, the same will be adjourned and continued, from day to day or from time to time, at the same place and between the same hours, until the same are completed.

Respectfully,

WALTER S. HALLANAN,
State Tax Commissioner of West Virginia;
E. T. ENGLAND,
Attorney General of the State of West Virginia,
By COUNSEL.

January 19, 1920.

S. B. AVIS,
F. O. BLUE,
W. G. MATHEWS,
Attorneys.

Due and legal service of the foregoing notice to take depositions is accepted for and on behalf of The Eureka Pipe Line Company, a corporation, this 21st day of January, 1920:

CHARLES POWELL,
KEMBLE WHITE,
Attorneys for The Eureka Pipe Line Company.

1365 Depositions of witnesses taken before the undersigned authority, a Notary Public in, of and for the County of Kanawha, in the State of West Virginia, at the law offices of McClintic, Mathews & Campbell, in the Citizens National Bank Building, Charleston, Kanawha County, West Virginia, on the 24th day of January, 1920, between the hours of nine o'clock in the forenoon and six o'clock in the afternoon, pursuant to the attached notice to take depositions, and acceptance endorsed thereon, for and on behalf of The Eureka Pipe Line Company, a corporation, to be filed and read in evidence on behalf of the defendants in a certain suit in chancery pending in the Circuit Court of Kanawha County, West Virginia, wherein The Eureka Pipe Line Company, a corporation, is plaintiff and Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, are defendants.

R. E. SHERWOOD,
Notary Public, Kanawha County, West Virginia.

Law Offices of McClintic, Mathews & Campbell,

Citizens National Bank Building.

Charleston, West Virginia, January 24th, 1920.

Present: Messrs. Frank L. Crawford, Charles Powell and Kemble White, Counsel for Plaintiff; Messrs. Fred O. Blue and W. G. Mathews, Counsel for Defendants.

1366 WALTER C. HARDY, a witness of lawful age, being first duly sworn, deposes and says as follows:

Direct examination.

By Mr. Mathews:

Q. State your name, age, residence and occupation.

A. Waller C. Hardy, 37, residence Charleston, West Virginia, occupation stock broker.

Q. You are a member of the bar of West Virginia and practiced in Charleston for a number of years before going into the stock brokerage business, did you not, Mr. Hardy?

A. Yes, sir, I was a member of the bar and practiced from 1904 until about 1913.

Q. Please state whether or not you are the same Waller C. Hardy who was appointed one of the Receivers of the Circuit Court in the case of Freudenberger Oil Company against E. A. Simmons and others by a decree entered December 28th, 1912.

A. I am.

Q. Who were your co-receivers in that case?

A. W. G. Mathews and M. F. Matheny.

Q. Mr. Matheny is an attorney residing in Charleston and W. G. Mathews is the same Mathews who is now examining you?

A. Yes, sir.

Q. Mr. Hardy, please state what were and are the duties of the Receivers in that case under the decree mentioned.

A. As I have always understood it, it was the duty of the
1367 Receivers to take and hold, and sell from time to time, the royalty oil accruing to the various claims in that suit and from time to time dispose, under the decrees of the court, of the proceeds from such oil to the persons to whom they were directed.

Q. Please state whether or not, under the decrees in that cause, the time and manner of making sales of oil which came into the custody of the Receivers was and is vested in the discretion of such Receivers.

A. I understand that is and always has been.

Q. State whether or not, after the appointment of such Receivers, they prepared and filed with The Eureka Pipe Line Company, on the usual forms adopted by and furnished by that company, division orders, showing the oil and the proportions to which said Receivers were entitled.

A. The Receivers made up and filed division orders for the various interests on forms prepared and furnished by The Eureka Pipe Line Company.

Q. I believe that under the rather peculiar leases in that case the royalty oil was and is one fourth of the oil produced rather than the customary one eighth, is that correct?

A. That is my understanding.

Q. Mr. Hardy, after the appointment of such Receivers, did they, from time to time, and at their discretion, sell the oil which was pro-
duced and run to their credit into the pipe lines of The
1368 Eureka Pipe Line Company?

A. They made sales from time to time of the royalty oil at more or less frequent intervals at the beginning but they have not made so many sales recently.

Q. Have you this afternoon examined the bank books and some of the records of the Receivers with a view to determining when and how often they made sale of such oil?

A. I have.

Q. You are at liberty to refer to those books to refresh your recollection, if you desire, and, with this understanding, I will request you to state approximately when and how often since their appointment the Receivers have sold this royalty oil?

A. Our account, that is, the account of the Receivers, was kept, and has been kept since the beginning, with the Citizens' National Bank of Charleston and as sales of oil were made and payments received the deposits were made in that bank. We sold practically every month in the years 1913, 1914 and 1915; we sold twice, we sold in January, 1917 and October, 1917; March, 1918 and September, 1918 and February, 1919. I have no records of sales since February, 1919 and I am sure we have made no sale since that time.

Q. Had the Receivers received monthly statements from The Eureka Pipe Line Company showing the oil run into its pipe line system to their credit since the appointment of such receivers?

1369 A. Yes, they have received monthly statements shortly after the first of each month.

Q. Have you examined the statements received from that company showing the number of barrels of oil to the credit of such Receivers as of December 1st, 1919?

A. December 1st?

Q. Yes.

A. My answer to that is that I have before me a statement showing the balances as of December 1st and also as of December 31st.

Q. That statement was rendered the Receivers by The Eureka Pipe Line Company?

A. Yes; it came to the Receivers through the mail addressed in the envelopes of The Eureka Pipe Line Company. I received it, myself.

Q. I will ask you to state the number of barrels to the credit of such Receivers as shown in that statement which you now have in your hand and which I request you to hand Mr. Crawford for examination, if he desires to examine it.

A. The statements which I have show that on December 1st, 1919 we had approximately 3,000 barrels of oil to the credit of the Receivers.

Q. Mr. Hardy, please state in what manner the Receivers sold oil, and to whom when they did sell it, at the times you have set forth in your former answers; that is, the procedure by which they sold and to whom they sold.

1370 A. Well, we have had a standard form of selling order furnished by Joseph Seep Purchasing Agency. We sign those selling orders whenever we want to make a sale and either designate the number of barrels to be sold in the face of the order or leave it blank, in which event I understand it means all oil, and payments are made by checks, as I understand it, of the South Penn Oil Company.

Q. Those selling orders, when signed by the Receivers, are mailed or sent to the Joseph Seep Purchasing Agency of the South Penn Oil Company at its office in Charleston, West Virginia?

A. Yes, sir.

Q. And the Receivers would receive back a check from that Agency drawn on the Seaboard National Bank of New York for the quantity of oil sold at the market price, is that correct?

A. I cannot say, Mr. Mathews, as to whether those checks have always been issued upon the Seaboard National Bank but we invariably receive a check from the Seep Agency for the amount of oil sold at the market price. I think the checks have all been drawn on the Seaboard National.

Q. I will hand you for your examination a printed form, marked "Purchasing Order, Form No. 805," on which appears the printed name "The Eureka Pipe Line Company," which is identical with

the form heretofore filed as an exhibit in this case with the deposition of Mr. Swisher, marked "Defendants' Exhibit Purchase
1371 Order" and ask you to state whether that is the form used by the Receivers in making their various sales?

A. Yes, sir, that is the form.

Q. Mr. Hardy, I will ask you whether, after the oil of the Receivers was run in a pipe line of The Eureka Pipe Line Company and prior to the receipt of these sales of such oil by the Receivers, the Receivers ever gave any instructions to The Eureka Pipe Line Company, either verbally or in writing, authorizing such oil to be encumbered, shipped or transferred, or in any manner permitting the same to be shipped, transferred or removed from the tanks or pipes of The Eureka Pipe Line Company.

Counsel for plaintiffs object to the foregoing question as immaterial and irrelevant.

A. I do not know of any such instructions as that. I do not recall any now.

Q. Did you ever yourself give, or unite in, any such instructions, or know of them being given by anyone?

Counsel for plaintiffs object to the foregoing question because the witness states he does not know.

A. I never gave any and I never united in any. In fact, the only papers I ever signed are division orders and selling orders.

Q. Do you know of your co-receivers ever giving any such instructions, written or verbal?

1372 A. I do not.

Q. Please state, if you are able, what disposition was made of the Receivers' oil after it was run into the pipe lines of The Eureka Pipe Line Company and until it was sold by the Receivers in the manner and at the times you have stated.

Counsel for plaintiffs object to the question as incompetent and involving assumptions which are contrary to the evidence in the case including much brought out by cross-examination for the defendants.

A. It is a physical impossibility to know what became of the oil. I have always been under the impression that it was held in the lines of The Eureka Pipe Line Company subject to our order.

Counsel for plaintiffs moved to strike out the latter part of the foregoing answer beginning with "I have always been under the impression," as incompetent, hearsay and improper and not the best evidence.

Q. I will now ask you whether, when the Receivers have received checks from the Joseph Seep Purchasing Agency of the South Penn Oil Company in payment for oil sold as you have detailed, there was any deduction made showing on the face of such checks for storage

charges on such oil in the hands and custody of The Eureka Pipe Line Company?

Counsel for plaintiffs objected to the question as — for an answer which is not the best evidence, involving the contents or the
1373 construction of a written document which should be produced, and as involving a conclusion of law and being incompetent and irrelevant.

Counsel for the defendants states that this question certainly does not call for any conclusion of law, but one of fact, as to what appeared on the face of the paper which is no longer in the possession but entirely beyond the control of the Receivers, the checks having, of course, been long since cashed.

Counsel for plaintiffs stated, in reply to the above, "The process of this court and the process of other courts are at the disposition of the defendants and their counsel and the document could have been produced from the present custodian, whoever that may be; the mere fact that it has passed out of the hands of this witness is no reason, as we understand, why the witness should be permitted to testify to the contents of a written document and we insist that the document shall be produced."

Counsel for defendants stated: "I know of no reason why this witness cannot testify as to any fact or anything which he has seen with his own eyes, but will state that it is my intention later to prove the same thing by a person who drew such checks."

A. I cannot recall, of course, what has been written across the face of the various checks from time to time that we have received but payments have been made for oil sold from time to time
1374 less certain charges for storage.

Counsel for plaintiffs moved to strike out the foregoing answer on the grounds stated to the objection to the question.

Q. Mr. Hardy, since the appointment of such Receivers have they ever received from The Eureka Pipe Line Company specific bills for storage of the oil of the Receivers which had been run into the pipe line system of that company?

Counsel for plaintiffs objected to the question on the grounds that it calls for the contents of a written document, for a conclusion of law, not the best evidence and because incompetent.

A. We have received such bills, yes.

Q. Have you any of them in your possession and hands at this time?

A. I have.

Q. I will ask you, first, to show them to Mr. Crawford, if he desires to look at them.

(Counsel for plaintiffs was handed the papers referred to).

Q. Are those bills which you hold in your hand now some of the bills which were received by the Receivers through the United States mail?

A. They are.

Q. I will ask you to file with your deposition, as part thereof, these bills which you now have and will ask the No ary to mark
1375 them "Hardy Exhibit 1", "2", "3", "4", "5", "6", "7", "8", "9" and "10".

A. I file them to be marked as requested.

Q. Mr. Hardy, without reference to your recollection as to what may have been endorsed on the face of the checks received from the Joseph Seep Purchasing Agency, I will ask you whether in any case where checks were received from that agency for oil sold when the oil had been in the pipe lines of The Eureka Pipe Line Company for the length of time which under its rules, rendered it subject to a storage charge, such storage charges were not in all cases deducted and the net balance remitted to the Receivers by such checks?

Counsel for plaintiffs objected to the question as containing several assumptions which are not supported by any evidence in the case and contrary to the evidence in the case, and also as calling for a conclusion of law and for a statement as to the contents of written documents and, therefore, not the best evidence.

A. It is my understanding that at the time of each sale of oil checks were given to the Receivers for the market price of the oil less whatever charges existed at that time against the Receivers for storage. I am not familiar as to what the rules and regulations of The Eureka Pipe Line Company are in every instance.

Counsel for plaintiffs moved to strike out the first part of the answer of the witness as obviously based on hearsay and not
1376 even professing to be based upon personal knowledge and asks that that understanding, down to the sentence beginning "I am not familiar with" be stricken out,—the motion to apply to so much of the answer as precedes the words "I am not familiar with."

Q. Mr. Hardy, is your statement in your last answer as to the amount received for sales of oil based upon your own knowledge, derived from the amount of oil to the credit of the Receivers and which was sold by them, as contained in the statements furnished the Receivers by The Eureka Pipe Line Company, from time to time?

Counsel for plaintiffs objected to the question as leading and, further, because it calls for an answer which is obviously based upon hearsay and not upon personal knowledge and, therefore, not the best evidence.

A. I am going to answer that question in this way: as one of the receivers in this case, I have been entirely familiar with settlements from time to time and statements have been furnished from time to time which show that oil is sold and paid for less certain charges for storage purposes. I have not those various and sundry papers before me. Naturally, it would be equally impossible to say from memory just what each paper contained over a period of seven or eight years past.

Counsel for plaintiffs moved to strike out so much of the answer of the witness as relates to charges for storage as calling for a
1377 conclusion of law and professes to give the contents of written documents which the wi ness admits are not now within his personal possession and of which he has no personal knowledge and, therefore, not the best evidence.

Q. Mr. Hardy, do you know what the present market price paid by the Joseph Seep Purchasing Agency for Pennsylvania grade of crude oil is per barrel?
A. $5.00 per barrel.
Q. Do you know how long it has been $5.00 per barrel?
A. Several weeks.

And further this deponent saith not.

A. G. WAMOCK, a witness of lawful age, being first duly sworn, deposes and says as follows:

Direct examination.

By Mr. Mathews:

Q. Mr. Wamock, state your name, age, residence and occupation, please.
A. A. G. Wamock, my age is 48, I am general manager of several oil companies and producers of oil and gas and am a resident of Charleston, West Virginia.
Q. For what oil producing companies are you general manager?
A. The Empire Petroleum Company, the Bird Oil Company and the Gurmer Oil Company.
1378 Q. Are the Empire Petroleum Company, the Bird Oil Company and the Gurmer Oil Company producers of Pennsylvania crude oil in West Virginia?
A. Yes, sir.
Q. In what fields, respectively, do they produce oil?
A. Clay and Kanawha Counties.
Q. All three of them?
A. Yes, sir.
Q. Do the wells of any or all of these three companies connect with and run oil into the pipe line system of The Eureka Pipe Line Company?
A. Yes, sir.
Q. Is that true of all of them?
A. Yes, sir.
Q. How long have you been connected with these three companies as general manager?
A. Well, the Petroleum Company, four years lacking a month, and the Bird Oil Company, about a year, since the organization, and the Gurmer Oil Company, three years past.
Q. Have each of these companies filed with The Eureka Pipe Line Company division orders showing the proportion on oil pro-

duced by them and run into the pipe lines of The Eureka Pipe Line Company which is owned by these three companies, respectively?

A. Yes, sir.

1379 Q. I will ask you to state, if you know, what disposition is made by each of these three companies of its oil after the same is run into the system of The Eureka Pipe Line Company?

A. Well, we most generally leave our oil in the hands of The Eureka Pipe Line Company in storage until the beginning of the month following the one in which the oil was run and then make a sales order for it and sell it.

Counsel for plaintiffs moved to strike out the answer as involving a conclusion of law.

Q. You have heard the testimony just given in this case by Mr. Waller C. Hardy in which he detailed the mode and manner in which the Receivers of the Freudenberger Oil Company made sale of their oil into The Eureka Pipe Line Company's Lines, have you not?

Counsel for plaintiffs objected to the question as not properly representing the testimony of Mr. Hardy.

A. Yes, sir.

Q. Please state whether or not the companies of which you are general manager sell their oil in the same manner or different from the manner detailed by Mr. Hardy.

Counsel for plaintiffs objected to the questions for the reasons last above assigned.

A. Yes, sir, we sell it by filling out a sales order and mailing it to the Seep Agency in Charleston, for them to transfer from The Eureka Pipe Line Company to the South Penn Oil Company

1380 a stated amount of oil.

Q. And on the sending in by those companies of the so-called purchase orders you receive back a check from the Joseph Seep Agency of the South Penn Oil Company for the amount of the oil sold?

A. Yes, sir.

Q. Mr. Wamock, are, or are not, your companies charged storage on any of their oil which is run into the physical control and the custody of The Eureka Pipe Line Company?

Counsel for plaintiffs objected to the question as calling for a conclusion of law, as calling for the contents of written documents and not the best evidence.

A. My recollection is that all three of those companies have never paid any storage charges because we do not leave the oil laying with The Eureka Pipe Line Company over the limit that they store without charges.

Counsel for plaintiffs moved to strike out the answer of the witness as involving a conclusion of law and undertaking to state the contents of written regulations and not the best evidence.

Q. Is there any restriction imposed by The Eureka Pipe Line Company in any way upon any of the three companies for which you are general manager as to the length of time which those companies can leave their oil on storage in the pipe line system of The Eureka Pipe Line Company?

1381 Counsel for plaintiffs objected to the question as calling for a conclusion of law, as calling for the contents of a written document and not the best evidence.

A. We prepare a division order showing the different interests and on that division order form there is printed that all oil that remains in their care after thirty days preceding the month that it it run in, there is a storage charge.

Counsel for plaintiffs moved to strike out the foregoing answer as undertaking to give the contents of a written or printed document and not the best evidence.

Q. Who furnish your companies with the forms to which you have just referred, Mr. Wamock?

Counsel for plaintiffs objected to the foregoing question, upon the same grounds as those upon which the last objection is made.

A. The Eureka Pipe Line Company.

Counsel for plaintiffs moved to strike out the foregoing answer upon the same grounds as last assigned in last preceding motion.

Q. Without reference to the amount of storage charges set forth on those forms, or otherwise, I want to ask you whether at any time there has been any limitation in time imposed upon any of your companies by The Eureka Pipe Line Company as to the length of time that you could permit your oil to remain in its lines by the payment of these storage charges?

1382 Counsel for plaintiffs objected to the question as clearly calling for the contents of a written document, or printed document, and not the best evidence as, if there is a printed document, it should be put in evidence.

A. There is no time limit in which you can keep your oil in storage with The Eureka Pipe Line Company that I know of.

Counsel for plaintiffs moved to strike out the foregoing answer on the same grounds as those stated in the objection and also as involving a conclusion of law.

Q. Now, Mr. Wamock, I want to ask you whether, after the oil of your several companies has been run into the pipe lines or tanks of The Eureka Pipe Line Company, any of these three companies ever gave The Eureka Pipe Line Company, in writing or verbally, any instructions or authority to encumber, ship or transfer that oil, or to sell or in any manner to permit the same to be shipped. transferred or removed from the tanks or pipes of the Company

other than the written purchase orders transferring part of that oil to the South Penn Oil Company?

Counsel for plaintiffs objected to the question as clearly involving the contents of a written document both negatively and affirmatively and, therefore, not the best evidence and incompetent and also as irrelevant.

A. No, sir.

Q. You mean by "No, sir" that such instructions or au-
1383 thority were never given to it to do any of the things embraced in the former questions?

Counsel for plaintiffs objected to the question for reasons last assigned.

A. I wish you would read the question.

The last preceding question was read to the witness.

A. My answer was "No, sir."

Q. Mr. Wamock, do you know what the present price paid by the Joseph Seep Purchasing Agency for Pennsylvania Crude Oil is?

A. Their posted price at their office this morning was $5.00 a barrel.

Q. I notice in the press of today that independent purchasers at Oil City are bidding or offering $5.25 for Pennsylvania Crude: I want to ask you whether there is any office in Charleston or any person or corporation other than the Joseph Seep Agency which buys oil or credit balances? And, if so, what they are?

Counsel for plaintiffs objected to so much of the question as states the contents of a newspaper item in regard to Oil City as incompetent and not evidence.

A. The Ohio Cities Gas Company, or the Mountain City Gas Company: we sell them some oil.

Q. Do you know what they, or either of them, are paying for Pennsylvania Crude in the market at this time?

1384 Counsel for plaintiffs objected to the foregoing question as irrelevant.

A. $5.50.

Q. Do you know how long they have been paying that price?

Counsel for plaintiffs objected to the question as irrelevant.

A. The 16th day of January, 1920.

Q. Mr. Wamock, do you personally know of the manner in which any other persons or corporations whose oil is run to their credit into the lines of The Eureka Pipe Line Company naturally dispose of or sell their oil in this section of West Virginia?

A. Do I know?

Q. Yes.

A. Yes, sir.

Q. State whether or not such persons or corporations of whom you have personal knowledge sell and dispose of their oil so run into such pipe lines in the same manner as you have detailed that the companies of which you are general manager sell and dispose of their oil.

Counsel for plaintiffs objected to the question as calling for the contents of written documents, since these transactions, as proven by this very witness and the preceding witness, are made in writing, and therefore not the best evidence, and also involving conclusions of law and because irrelevant.

1385 A. I do not believe I could answer it although the general knowledge is that all companies that sell oil go through the same form with The Eureka Pipe Line Company and file the same papers.

Counsel for plaintiffs moved to strike out the foregoing answer as confessedly hearsay and not pertaining to any personal knowledge.

Q. Let me ask you this question, then: state whether or not the companies producing in this section of which you have personal knowledge do, or do not, all sell their oil to the South Penn Oil Company?

A. Yes, several of them.

Q. Do you know of any in this section who do not sell their oil to the South Penn Oil Company?

Counsel for plaintiffs objected to the question as irrelevant.

A. You mean oil run to The Eureka Pipe Line Company?

Q. Yes.

A. No, I do not.

Q. Mr. Wamock, did any of your companies at any time ever make a so-called tender, or offer of tender of shipment of their oil to The Eureka Pipe Line Company?

A. I do not understand your question; do you mean—have any of our companies ever offered——

Q. (Interrupting.) Made what is shown in this case to be called a tender or offer of tender directing the shipment or con-
1386 signment of oil to their credit to some given assignee, either within or without the State of West Virginia?

Counsel for plaintiffs objected to the foregoing question.

A. No, sir.

Q. Did you ever see a tender of offer of shipment?

A. No, sir.

Q. Do you know exactly what one is?

A. No, sir, I do not.

Cross-examination.

By Mr. White:

Q. How many oil wells does the Empire Petroleum Company have in Kanawha and Clay Counties?
A. Thirty-five.
Q. Are they pretty well bunched together or scattered around over considerable territory?
A. The Empire wells in Kanawha County are on 1,000 acres and 32 acres and in Clay County their wells are on possibly 25 acres.
Q. What is the name of this 1,000 acre tract?
A. The D. J. Jarrett farm and the Squire Jarrett heirs farm.
Q. How many oil wells does the Bird Oil Company have?
A. One.
Q. In what county?
1387 A. Clay.
Q. Is the oil thus produced from that well by Bird Oil Company run by it into the custody of The Eureka Pipe Line Company?
A. It is.
Q. Through what kind of a conveyance?
A. A two inch line.
Q. What is the length of that line from the well through its connections to the lines of The Eureka Pipe Line Company?
A. It is The Eureka Pipe Line and the tank.
Q. It is not conveyed by any pipe line until it is taken by the pipes of The Eureka?
A. No, sir, only the producing well; from the well into the tanks.
Q. How many tanks has that well?
A. Two.
Q. What is the length of the line from the well to the tanks?
A. About sixty feet.
Q. How many wells does the Gurmer Oil Company have?
A. One.
Q. In what county?
A. Kanawha.
Q. How does the Empire Petroleum Company get the oil which it produces from its thirty wells on the 1,000 acre lease from
1388 those wells into the lines of The Eureka Pipe Line Company?
A. I believe I said there is thirty wells. We have tankage on the leases and The Eureka Pipe Line Company makes connection to those tanks and runs the oil from those tanks.
Q. How many tanks do you have on that lease?
A. We have seventeen different tanks on the reservation.
Q. Are those thirty-two wells scattered around over the thousand acres?
A. Yes, sir.
Q. What is the length of the pipe lines from the wells of the Gurmer Oil Company to the tanks of the Gurmer Oil Company?
A. Possibly 200 feet.

Q. You mean from each well to each tank?

A. There is only one well on the Gurmer Oil Company.

Q. I do not mean the Gurmer Oil Company,—I mean the Empire Petroleum Company.

A. There are different length lines, possibly from a hundred feet up to six or seven hundred feet from the wells to the stock tanks.

Q. And you have at least as many lines as you have tanks?

A. Yes, sir.

Q. In fact, you have more lines than you have tanks, do
1389 you not?

A. Yes, sir.

Q. Can you state definitely how many lines you do have?

A. We have a line for each well.

Q. You have at least thirty-two oil pipe lines on that 1,000 acre lease?

A. Yes, sir, different lengths.

Q. Leading from each oil well into some tank from which The Eureka Pipe Line Company runs your oil?

A. Yes, sir.

Q. And your oil pipe lines vary in length from six or seven hundred feet down to smaller distances?

A. Yes, sir.

Q. Do you know where the O'Connell lease is on Falling Rock in Kanawha County?

A. Yes, sir.

Q. Have you ever been to that lease?

A. Yes, sir.

Q. Do you know how the oil gotten or produced from that lease is gotten to market?

A. Yes, sir.

Q. How?

A. They gather it into tanks and pump it over the hill on the Blue Creek side to a stock tank and it is shipped in tank cars to the Sun Oil Company at Cleveland, Ohio.

1390 Q. Do you know how many wells are on that O'Connell lease?

A. I could not tell you exactly; something near fifty.

Q. That lease has had in the neighborhood of fifty wells on it for a number of years, has it not, five or six years, I believe, and it is producing a large volume of oil, is it not?

A. I believe so.

Q. And that oil has been shipped, as you stated, by pipe line over the hill to the Blue Creek side and then loaded in racks into tank cars and shipped in tank cars out of the State?

A. I do not know whether all of the oil or not. I do not know whether the Eureka ever had lines on the O'Connell farm or not but I know for several years the Sun Oil Company has taken the oil from the O'Connell lease.

Q. In the way you described?

A. Yes, sir.

Q. You spoke of a line leading from the tanks on the O'Connell

lease over the hill to the railroad: what is the length of that oil line, do you know?

A. I expect about three and a half miles.

Q. And it is through that line that this oil has been transported from the producers' tanks on the lease over to the railroad and there loaded on tank cars?

1391 A. Yes; as far as I know, that is the way it gets there.

Q. You do, in fact, know that that line has been used for that purpose?

A. Yes, sir.

Q. You know that the O'Connell Oil Company has been operating that lease?

A. They operated it in the start. They afterwards sold the property to the Sun Oil Company. I think about eight or nine months ago the Sun Oil Company sold it.

Q. To whom?

A. I could not tell you who the new buyers are. They are some parties from Marietta, Ohio, I think, and possibly Parkersburg.

Redirect examination.

By Mr. Mathews:

Q. Mr. Wamock, do you know why the O'Connell Oil Company and the Sun Oil Company shipped their oil by pipe line over to the Blue Creek side and from that point on tank cars instead of running it into The Eureka Pipe Line Company's lines?

A. Well, I think I know.

Q. Why?

A. The premium that was paid on the oil.

Q. Did The Eureka Pipe Line Company's lines reach wells of the O'Connell Oil Company or its successor, the Sun Oil Company?

1392 A. They went right by them to reach other properties.

Q. How close to them, do you know?

A. Right through the O'Connell Oil Company's leases.

Q. Do you know whether The Eureka Pipe Line Company ships or transports any oil by tank cars?

A. Well, I think they do, in a case of emergency, take care of a new field or a break in the lines or something.

Counsel for plaintiffs moved to strike out the foregoing answer as not based on personal knowledge and involving a speculation on the part of the witness.

Q. Is your answer made on personal knowledge, Mr. Wamock, or not?

A. Well, I know that The Eureka Pipe Line Company has shipped oil out of this country in tank cars. I suppose it is The Eureka Pipe Line Company. I will answer that question by saying "No" because I do not know for sure.

Counsel for plaintiffs moved to strike out the first part of the foregoing answer as confessedly not based on knowledge.

A. (continued). There is one thing I do know: I know they offered to take oil out for us on tank cars.

Q. When was that, Mr. Wamock?

A. Two years ago, not quite two years ago, at Kelly's Creek.

Q. Whom do you mean by "us"?

A. Mr. McVey, I believe, was the man. "Us,"—that *that*
1393 was the Cabin Creek Oil Development Company.

Q. And that company operated where?

A. Kelly's Creek.

Q. Kanawha County, West Virginia?

A. Yes, sir.

Q. Did The Eureka Pipe Line Company have its pipe lines connecting its operations at Kelly's Creek?

A. No, sir, they never had a line into Kelly's Creek.

And further this deponent saith not.

Mr. Mathews: "I stated a few moments ago, in response to an objection to a question, that I expected to prove by the representative of the Joseph Seep Agency who drew the checks in payment for oil sold by the Receivers of the Freudenberger Oil Company and other sellers of oil in this section of the state that when that oil was subject to storage charges the checks showed that fact on their face and the amount of such storage charges. I had arranged this afternoon to have Mr. P. M. Doty, who is the gentleman in charge of that Agency in the city of Charleston, present at two o'clock to give his deposition to that effect. I am unable to say why he is not here as he gave me his personal assurance he would be. I have had the office of the Joseph Seep Purchasing Agency of the South Penn Oil Company telephoned and they advise that he never comes back Saturday afternoons. He apparently has no telephone at his residence and I do not know how else to try to get at him this
1394 afternoon. I did not have him summoned because he told me he would come without being summoned. It is highly probable, for reasons it is unnecessary to state now, that we will not be able to bring this case up Monday morning. Therefore, I think we will have to arrange to get Mr. Doty here for a few minutes on Monday morning and prove the isolated facts I have just stated unless it can be agreed with counsel on the other side."

The further taking of these depositions was then, at 4.00 o'clock, p. m., adjourned until Monday, January 26th, 1920, at ten o'clock, a. m., at the same place and between the same hours.

R. E. SHERWOOD,
Notary Public.

1395 Monday, January 26, 1920—10:00 o'clock a. m.

Met pursuant to the foregoing adjournment.
Present: The same parties.

P. M. DOTY, a witness of lawful age, being next duly sworn, deposes as follows:

Direct examination.

(By Mr. Mathews:)

Q. Mr. Doty, state your name, age, residence and occupation, please.

A. P. M. Doty, age thirty-seven.

Q. And your residence and occupation?

A. Charleston, and I am agent for Joseph Seep Purchasing Agency.

Q. You are in charge of the Joseph Seep Purchasing Agency's office in the city of Charleston, West Virginia, are you not?

A. Yes; yes, sir.

Q. Does that agency maintain other offices in the state of West Virginia for the purpose of purchasing oil or credit balances, and if so please state where such other offices in this state are located.

A. We handle credit balances in this office here and at Parkersburg, Mannington, and Sistersville.

Q. Does your office in the city of Charleston buy oil or credit balances of Pennsylvania crude oil that is run into the pipe-
1393 lines of the Eureka Pipe Line Company's system?

A. Our agency buys credit balances that is offered to it that are run by the Eureka Pipe Line.

Q. Without asking or expecting you to accurately give the exact number, Mr. Doty, please give us some idea of the number of persons or corporations who have oil to their credit in the Eureka Pipe Line Company's system who sell that oil through your Charleston office.

A. Well, I guess there is a hundred or more offers credit balances from this district around through here.

Q. That is, at least one hundred regularly offer——

A. (Interrupting.) Or monthly or so.

Q. At least one hundred and probably more.

A. Yes, one hundred at least.

Q. These offers, as I understand, are made to your office in writing on the usual form which is prepared for that purpose by the Eureka Pipe Line Company?

A. I got the forms from the Joseph Seep Purchasing Agency.

Q. I will ask you whether the sales made of oil or credit balances of the Pennsylvania grade of oil in the Eureka Pipe Line Company's lines are not made on the form which I will now hand you for examination, marked "Purchase Order Form No. 805." Please examine this and state whether or not this is the usual purchase order or selling order which is handled through your office here.

A. Yes, this is the usual form that we use.

1397 Q. Now, when these so-called purchase orders are brought or sent to your office, do you verify the amount of oil or credit balance which the proposed seller has to his credit with the Eureka Pipe Line Company and storage charges against such oil or credit balance by telegraphic the Eureka Pipe Line Company at either Oil City or Pittsburgh before you purchase this oil?

The plaintiffs object to the question as leading and calling for a conclusion of law.

A. No person knows exactly, generally, how much oil or credit balance there is to their credit when they come up there.

Q. Well, do you verify these matters in the manner I have stated in my last question by telegraphing the Eureka Pipe Line Company before you purchase?

Same objection.

A. The Eureka Pipe Line Company—really I don't have anything to do with them. I handle that through the Joseph Seep Purchasing Agency in Pittsburgh, you know.

Q. Well, how do you ascertain whether or not the seller of such oil has that oil to his credit or not?

A. I wire the Joseph Seep Purchasing Agency.

Q. Well, do you or do you not wire the Eureka Pipe Line Company?

A. We own our own wire, Joseph Seep Purchasing Agency, from here to Pittsburgh, and I wire to their office.

1398 Q. Well, doesn't your agency, the Joseph Seep Agency, verify by telegram to the Eureka Pipe Line Company the amount of oil that the proposed seller has? Do you mean that you simply wire yourself at Pittsburgh to find out whether they have the credit balance or not, or do you mean that the Joseph Seep Agency wires the Eureka Pipe Line Company and finds out?

A. I wire them there, and I receive it back from them, the Joseph Seep Agency.

Q. Do you mean that you personally do not wire the Eureka Pipe Line Company for any information and don't obtain any information from them?

A. It is only through accommodation that I do.

Q. Well, I don't care whether it is through accommodation or how it is. I want to know whether, as a matter of fact, the Joseph Seep Agency does not, before it buys oil, ascertain from the Eureka Pipe Line Company by telegram whether the proposed seller has the oil he is proposing to sell to his credit in the Eureka Pipe Line Company's system.

A. Yes, that information must be received before we can buy, but I get it through the Joseph Seep Purchasing Agency.

Q. Well, you are the Joseph Seep Purchasing Agency at Charleston, are you not?

A. At Charleston, yes.

Q. And does that agency, or does it not, ascertain by telegram from the Eureka Pipe Line Company whether the proposed seller has the oil or the credit balance with the Eureka Pipe Line Company?

1399 The plaintiffs object to the foregoing question because it appears that the witness has no personal knowledge of the matter, he representing only the local office of the Joseph

Seep Purchasing Agency, and stating that he derives his information from the head office of that agency.

A. I think if you would take that up with the general office there they would answer that I have no way to say.

Q. Mr. Doty, didn't you tell me on Friday of last week that your Charleston office wired from here to the Eureka Pipe Line Company and not to the Joseph Seep Agency and obtained this information before you bought oil?

A. Well, that was in conversation up there, and not going right down to facts, I did, yes.

Q. Do you mean to tell me you would tell me one thing in conversation and another thing under oath?

A. I didn't know the nature of the case, I didn't know anything about it when you came in there, and I simply said I could wire the Eureka Pipe Line office, but we wire the Joseph Seep Purchasing Agency.

Q. May I inquire whether you have been questioned about or informed as to this case since I saw you on Friday?

A. I have been talking about it some.

Q. With whom?

A. I talked to Mr. Wolfer, of the South Penn Oil Company, and he told me a little about what the case was about.

Q. Did he tell you that it was to your interest or to your company's interest to disclose the facts on the stand or not to disclose them?

A. He didn't state anything about it.

Q. Well, you remember, of course, that you did tell me on Friday that before your Charleston office, which is in your charge, bought oil when it was offered for sale on the form which has just been shown you, that you did verify by telegram to the Eureka Pipe Line Company the amount of credit balance that the proposed seller had, and were advised by telegram by the Eureka Pipe Line Company of such amount and of the storage charges against it? Didn't you tell me that?

A. Well, sir, I wire direct to the Joseph Seep Purchasing office in Pittsburgh. They furnish the information that I ask for, and beyond that they get it from other sources. That don't pertain to my business at all here. They furnish me the amounts and everything and I figure it out, the charges against it, and remit the producer a check.

Q. Mr. Doty, you draw the checks——

A. Yes.

Q. (Continuing:) For the Joseph Seep Agency for the payment of the oil and credit balances purchased in the manner you have stated. do you not? You personally draw those checks?

A. Yes, sir. I figure them and draw the check, yes.

Q. When the oil so sold is subject to a storage charge in favor of the Eureka Pipe Line Company and when you draw checks in payment therefor, state whether you do or do not show on the face of such checks the amount of such storage charges by placing thereon

the words "less storage" or "less stg.", followed by the amount in figures of the storage charge, and draw the check for the net
1401 balance at the market price after such deduction is made. Is that correct?

A. Yes, as a sort of a memorandum I put it on the check there for the benefit of the man. I say, "Ten barrel at $5 a barrel, less ten cents storage," yes, and that is charges given to me. To make it plain to the party that sells the oil, I have got in the habit of making it "stg."—storage. That gives you a memorandum of exactly what the check is for.

Q. Now, may I inquire where you obtain your information as to the amount of these storage charges which you state you so deduct from the check and which you indicate upon the face of the checks?

A. Well, that is obtained from the Joseph Seep Purchasing Agency in Pittsburgh. I ask for a credit balance. Simply wire the name to the Joseph Seep Purchasing Agency. They furnish me with information of credit balances and charges against that account.

Q. Do you know, of your own knowledge, where they get the information that they give you?

A. Well, I have my own ideas about it, but I don't have anything to do with that part of it.

Q. Don't you know, as a matter of fact, where they get that, of your own knowledge?

A. I have my idea about it.

Q. I am not asking you about your idea. I am asking you, under oath, whether you don't personally know where they get that
1402 information, and whether that source of information isn't the Eureka Pipe Line Company?

A. I would judge it came from those people, but in the way I do my business here I wouldn't have—or don't know a thing about it after it goes to Pittsburgh, as far as the Eureka Pipe Line Company is concerned, but it stands to reason that it come- from their—from that source. I simply just handle the credit balances, what is given to me on the wire from the Joseph Seep Purchasing Agency. I am not connected with the Eureka Pipe office in Pittsburgh whatever. I haven't even the right to furnish them a division order, or any of their papers here—a transfer order. I have nothing to do with it. I just simply buy the oil for the Joseph Seep Purchasing Agency. I haven't even the right, except through accommodation, to furnish Eureka Pipe Line Company a division order or transfer order. If I did make it out I just do it on my own account, not that I am connected or have any advice from anybody to make them out. We furnish the Eureka Pipe Line Company any information they want.

Q. Did you ever do that in your life?

A. Yes, sir many a time.

Q. Do you, when a proposed seller of oil comes to your Charleston office and offers to sell the South Penn Oil Company oil, do you ever send that proposed seller to the Eureka Pipe Company, or don't you yourself ascertain what amount of oil he has and then buy it?

A. Through the Joseph Seep Purchasing Agency——

1403 Q. I am not asking you that.

A. No, I have no correspondence with the Eureka Pipe Line Company.

Q. And you don't send the proposed sellers to them; you take it up and buy the oil, don't you?

A. Just simply act as a broker in handling and buying this oil at the market price, through the Joseph Seep Purchasing Agency.

Q. What do you mean by acting as a broker?

A. Just buy the oil at the market price. We get it every morning at ten o'clock, and another one, if there is any change.

Q. Is that what you mean when you say you act as a broker, that you buy it for your company?

A. I buy it for the Joseph Seep Purchasing Agency, yes, sir.

Q. That is what you mean when you say you act as a broker?

A. Yes.

Q. What is your company paying for Pennsylvania grade of crude oil today, Mr. Doty?

A. $5.25 this morning.

Q. When did the price go to $5.25?

A. Only this morning. Opened at—supposed to be ten o'clock this morning at $5.25.

Q. January 26, 1920?

A. Yes, sir.

1404 Stipulation.—It is admitted, for the purpose of this case, that the information obtained by the Joseph Seep Purchasing Agency, of Pittsburgh, and by it transmitted to its agency at Charleston, in regard to the amount of credit balances held by any person offering to sell to the Joseph Seep Purchasing Agency and as to any charges against the account, is obtained from the Eureka Pipe Line Company.

Mr. Mathews: With that stipulation, I do not care to ask the witness any further questions.

Mr. Crawford: I have no questions.

(No cross-examination.)
(And further this deponent saith not.)
(Signature waived by agreement of counsel.)

WALLER C. HARDY, recalled as a witness, deposes as follows:

Direct examination.

(By Mr. Mathews:)

Q. Mr. Hardy, you are the same Mr. Hardy who was on the witness stand in this case on Saturday?

A. I am.

Q. Since you were on the stand, have you received through the United States Mail from the Eureka Pipe Line Company any ad-

ditional bills for storage charges made out against yourself and the co-receivers in the case of Freudenberger Oil Company against Simmons and others?

1405 The plaintiff objects to the question as involving the contents or construction of a written document and as characterizing evidence, and therefore, on both those grounds, incompetent and not the best evidence.

A. I have.
Q. Have you such bills with you this morning?
A. I have.
Q. Let me see them, please.

(Witness hands papers to Mr. Mathews.)

Q. I will ask you, please, to produce and file such bills with your deposition and offer them in evidence, to be marked by the Notary exhibits Hardy Nos. 11 to 22, both inclusive.
A. I file same, marked as requested.

The bills referred to were filed as evidence and marked Exhibits Hardy Nos. 11 to 22, inclusive.

Mr. Mathews: That is all with this witness.
Mr. Crawford: No questions.
(No cross-examination.)
(And further this deponent saith not.)
(Signature waived by agreement of counsel.)

1406 *Notary's Certificate.*

STATE OF WEST VIRGINIA,
County of Kanawha, To-wit:

I, Reuel E. Sherwood, a Notary Public in, for and of the County of Kanawha, State of West Virginia, hereby certify that the foregoing depositions of Waller C. Hardy, A. G. Wamock and P. M. Doty were taken before me at the times and place and for the purpose named in the caption hereof, the notice to take depositions hereto attached and the adjournment herein noted; that the depositions of said witnesses were correctly taken by me in stenographic characters and by me accurately transcribed into the English language and that the foregoing is a full, true and correct transcript of the evidence adduced and proceedings had at the taking of said depositions.

My commission expires September 5th, 1922.

Given under my hand this 26th day of January, 1920.

(Sgd.) REUEL E. SHERWOOD,
Notary Public.

Taxation of costs:

Witness Waller C. Hardy, 2 days at $1.00	$2.00
" A. C. Wamock, 1 day " "	1.00
" P. M. Doty, 1 day " "	1.00
Notary fee, 10,500 words at 20¢ per 100	21.50
Total	$25.50

A true carbon copy:

REUEL E. SHERWOOD,
Notary Public.

1407

In Kanawha Circuit Court.

In Chancery.

THE EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et al.

It is stipulated by the parties (in lieu of otherwise proving the same) that the total assessed valuation of real estate and of personal property in the State of West Virginia, including that assessed by the Board of Public Works, *including that assessed by the Board of Public Works*, as well as the total amount of State taxes assessed thereon, and the total amount of the excise tax, was as follows, respectively, for each of the following years, viz:

For the Year 1915.

	Valuation.	State tax.
Real Estate	$691,445,971.00	$938,024.00
Personal Property	$274,157,288.00	$383,820.00
Property assessed by the Board of Public Works	$320,933,265.00	$449,353.00
Total Valuation of all Property	$1,286,569,524.00	
Total Amount of State taxes Assessed thereon		$1,801,197.00
Amount of Excise Tax		

For The Year 1916.

	Valuation.	State tax.
Real Estate	$696,729,871.00	$627,057.00
Personal Property	$278,298,294.00	$250,918.00
Property assessed by the Board of Public Works	$323,022,687.00	$290,720.00
Total Valuation of all Property	$1,298,550,852.00	
Total Amount of State taxes assessed thereon		$1,168,695.00
Amount of Excise Tax for year ending June 30, 1916 (½%)		$323,000.00

For The Year 1917.

	Valuation.	State tax.
Real Estate	$713,778,583.00	$785,156.00
Personal Property	$316,055,423.00	$347,631.00
Property Assessed by the Board of Public Works	$336,305,819.00	$369,936.00
1408 Total Valuation of all Property	$363,129,828.00	
Total Amount of State Taxes Assessed thereon		$1,502,753.00
Amount of Excise Tax for year ending June 30, 1917 (½%)		$509,000.00

For The Year 1918.

	Valuation.	State tax.
Real Estate	$745,595,517.00	$521,917.00
Personal Property	$358,142,114.00	$253,699.00
Property assessed by the Board of Public Works	$345,714,123.00	$242,000.00
Total Valuation of all Property	$1,449,451,754.00	
Total amount of State Taxes assessed thereon		$1,014,616.00
Amount of Excise Tax for year ending June 30, 1918 (¾%)		$1,325,000.00

For The Year 1919.

	Valuation.	State tax.
Real Estate.....	$767,653,310.00	$1,074,714.00
Personal Property.....	$372,631,032.00	$521,683.00
Property Assessed by the Board of Public Works.....	$349,550,431.00	$489,371.00
Total Valuation of all property	$1,489,834,833.00	
Total Amount of State Taxes assessed thereon		$2,085,768.00
Amount of Excise Tax for year ending June 30, 1919 (¾%)		$700,000.00

It is stipulated and agreed further, however, that while the above figures correctly set forth valuations and revenues from the two sources named that the State of West Virginia has and had during each of said years various other sources of large revenues, (charter taxes, general license taxes, capitations, automob-le license taxes, fees, e'c.,) and collected and received said other large actual revenues from taxations, and that the above does not purport to show
1409 or include all revenues of said State for either of said years 1915, 1916, 1917, 1918 or 1919.

Dated January 27, 1920.

FRANK L. CRAWFORD,
CHARLES POWELL,
KEMBLE WHITE,
Of Counsel for Plaintiffs.
FRED O. BLUE,
W. G. MATHEWS,
S. B. AVIS,
Of Counsel for Defendants.

(The foregoing paper writing bears the following endorsement on the back thereof:

"Stipulation of certain facts. Filed by Order of Court Jan. 27, 1920, in Kanawha Circuit Court Clerk's Office. A. P. Hudson, Clerk.")

1410 *Certificate of Incorporation.*

STATE OF WEST VIRGINIA:

The Eureka Pipe Line Company.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, hereby certify that an agreement, duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Eureka Pipe Line Company, for the purpose of transporting, pipeing, shipping and storing petroleum and other mineral oils, of purchasing, leasing and otherwise acquiring, developing, holding, selling and disposing of real estate and other property which may be necessary or convenient for the purpose of its organization and business and of erecting, constructing, acquiring, operating and maintaining a line or lines of pipe, tubing, tanks, offices, stations and such other machinery and devices or arrangements, including telegraph lines, as may be necessary for the purpose of transporting, pipeing, shipping and storing petroleum or other mineral oils, and the transaction of its business, with the right to have and enjoy all the rights, powers, privileges and franchises granted and conferred upon Corporations organized for said purpose by the laws of West Virginia. Which corporation shall keep its principal office or place of business at Oil City, County of Vanaggo, in the State of Pennsylvania, and is to expire on the 10th day of December A. D. 1940. And for the purpose of forming said corporation, we have subscribed the sum of One Million ($1,000,000) dollars to the Capital stock thereof, and have paid in on said subscription the sum of One hundred thousand ($100,000) dollars being ten (10%) per centum of the amount thereof, and desire the privilege of increasing said Capital by the sale of additional shares from time to time to the sum of Two Million ($2,000,000) Dollars in all. The Capital so subscribed is divided into shares of One hundred dollars each, which are held by the undersigned respectively, as follows, that is to say:

Daniel O'Day, of Buffalo, N. Y.	9,200	Shares
C. N. Payne, of Titusville, Pa.	200	"
C. W. Archibald, of Parkersburg, W. Va.	200	"
H. McSweeney, of Oil City, Pa.	200	"
J. R. Campbell, of Oil City, Pa.	200	"
	10,000	"

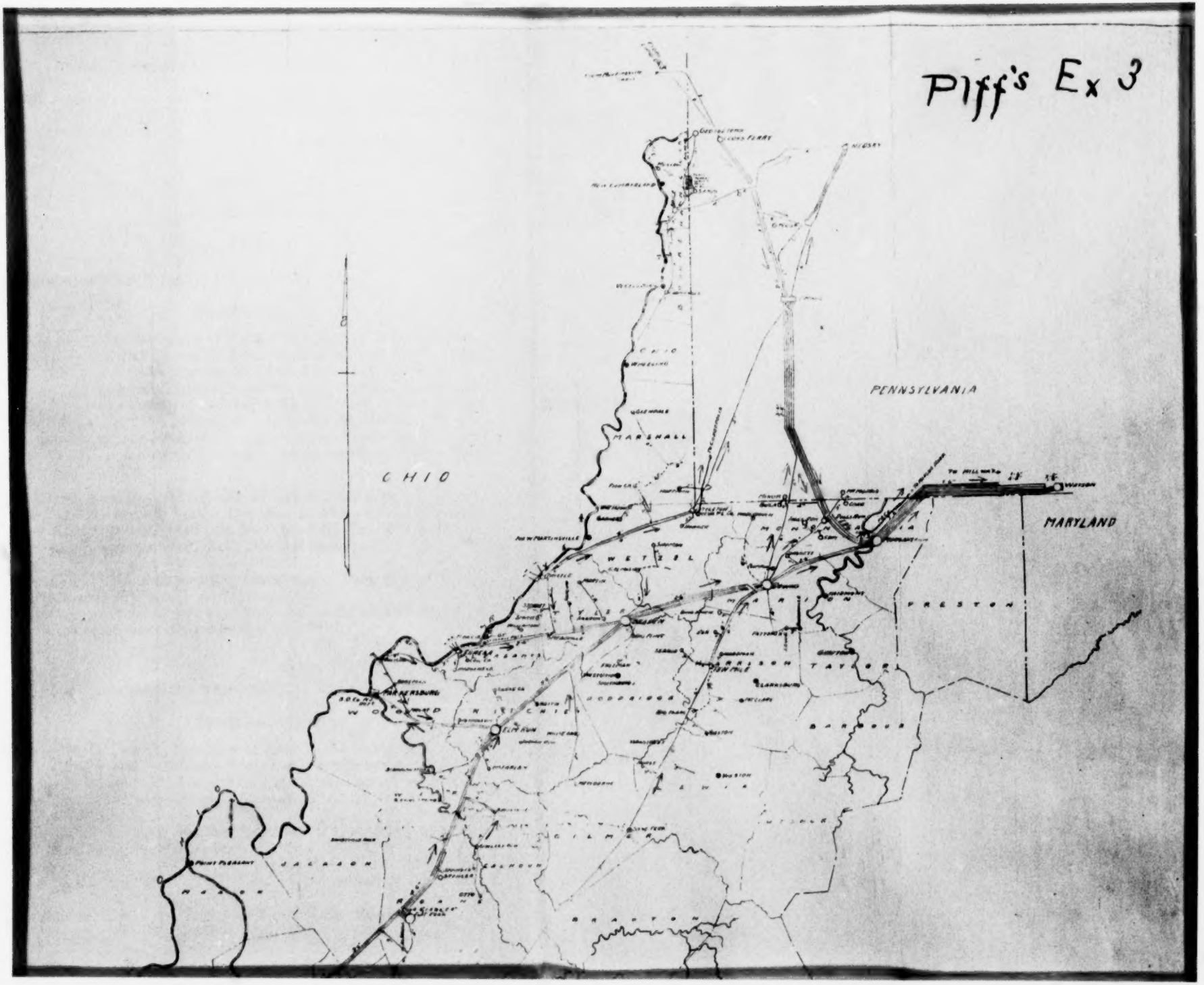
And the Capital to be hereafter sold is to be divided into shares of a like amount.

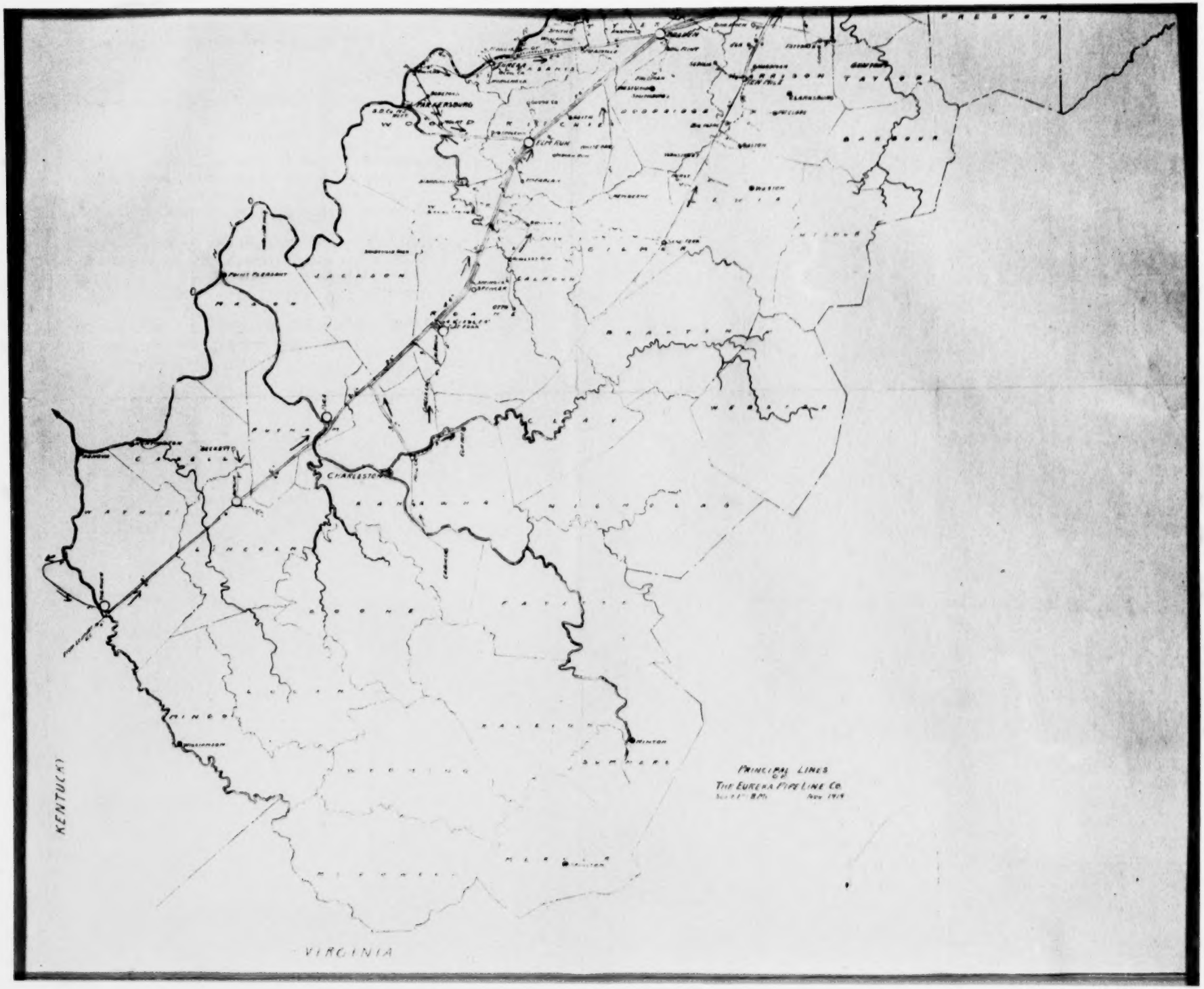
1411 Given under our hands this — day of December A. D. 1890.

DANL. O'DAY.
C. N. PAYNE.
C. W. ARCHIBOLD.
H. McSWEENEY.
J. R. CAMPBELL.

Wherefore: The corporators named in the said agreement and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the Tenth day of December Nineteen hundred and Forty, a corporation by the name and for the purposes set forth in said agreement.

Piff's Ex 3


PENNSYLVANIA
MARYLAND
OHIO
MARSHALL
WETZEL
TYLER
PRESTON
DODDRIDGE
HARRISON
LEWIS
GILMER
BARBOUR
UPSHUR
RANDOLPH
TAYLOR
MARION
MONONGALIA
WOOD
JACKSON
CALHOUN
ELK RUN


KENTUCKY
VIRGINIA
CHARLESTON
PRESTON
PRINCIPAL LINES
OF
THE EUREKA PIPE LINE CO.

Given under *by* hand and the Great Seal of the said State, at the City of Charleston this Twenty second day of December Eighteen hundred and ninety.

[SEAL.] WM. A. OHLEY,
Secretary of State.

1412 Copy.

PL. EX. No. 2.

Nov. 17/19.

THE STATE OF WEST VIRGINIA:

Certificate.

I, Wm. A. Ohley, Secretary of State of the State of West Virginia, do hereby certify that Daniel O'Day, President of The Eureka Pipe Line Company, a corporation created under the laws of this State, has certified to me under his signature and the corporate seal of said corporation, that at a meeting of the stockholders thereof, held in pursuance of law at Oil City, Pa., on the 18th day of March, 1892, at which meeting all the stock of the company was represented by the holders thereof in person or by proxy, the following resolution was unanimously adopted:

"Resolved, That the capital stock of The Eureka Pipe Line Company be, and the same is hereby increased to Five Million ($5,000,000) of dollars, to be divided into fifty thousand (50,000) shares of the par value of one hundred ($100) dollars each."

Wherefore, I do declare said increase of capital stock as set forth in the foregoing resolution to be authorized by law.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this sixth day of April, 1892.

[SEAL.] WM. A. OHEY,
Secretary of State.

1413 THE STATE OF WEST VIRGINIA:

Certificate.

I, Wm. M. O. Dawson, Secretary of State of the State of West Virginia, do hereby certify that the foregoing is a true and correct copy of the resolution and Certificate of Increase of the capital stock of the Eureka Pipe Line Company, as appears from the records in my said office.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-seventh day of March, 1901.

[SEAL.] WM. M. O. DAWSON,
Secretary of State.

(Here follows map of the Principal Lines of the Eureka Pipe Line Co., marked page 1414.)

Copy.

PLF. EX. 4.

Sheet- 1 & 2.

The Eureka Pipe Line Company.

Statement Showing Deliveries of Crude Oil Made by The Eureka Pipe Line Company for Twelve Months Ending June 30, 1919.

	Barrels.	Rate.	Amount.
Oil produced in West Virginia and delivered to points in West Virginia for use in West Virginia:			
Standard Oil Co.—Parkersburg, W. Va.	802,164.22	(Gath) .20	160,432.85
Ohio Valley Refining Co.—St. Marys, W. Va.	179,737.77	(Gath) .20	35,947.56
Elk Refining Co.—Falling Rock, W. Va.	257,148.19	(Gath) .20	51,429.64
Pittsburgh & West Virginia Gas Co.—Downs, W. Va.	32.61	(Gath) .20	6.52
Hope Natural Gas Co.—Downs, W. Va.	4.86	(Gath) .20	.97
Carnegie Natural Gas Co.—Downs, W. Va.	11.90	(Gath) .20	2.38
	1,239,099.55		
Oil produced in West Virginia and delivered to other carriers in West Virginia for Interstate Transportation:			
Pure Oil Co.—Morgantown, W. Va.	506,779.12	(Gath) .20	101,355.82
West Virginia Pipe Line Co.—Littleton, W. Va.	131,811.67	(Gath) .20	26,362.40
	638,590.79		

Oil produced in West Virginia and delivered at Pennsylvania State Line to other carriers for further transportation outside the State of West Virginia:			
To South West Pennsylvania Pipe Lines	722,704.79	(Gath) .20	144,540.94
To Southern Pipe Line Company	3,646,013.62	(Gath) .20	729,202.72
(For additional rates see *). (For tariffs see *).	4,368,718.41		
Oil produced outside West Virginia and delivered to other carriers on I. C. C. Tariffs:			
For Bayonne, N. J., Buckeye, I. C. C. 212	622,037.29	.0737	45,844.17
Bayonne, N. J., Buckeye, I. C. C. 209	712,247.74	.0737	52,492.79
Bayonne, N. J., Prairie, I. C. C. 33	3,728,665.65	.0231	86,132.25
Bayonne, N. J., Prairie, I. C. C. 30	1,190,661.96	.0206	24,527.63
Bayonne, N. J., Prairie, I. C. C. 66	496,135.95	.0231	11,460.75
Bayonne, N. J., Prairie, I. C. C. 58	124,028.98	.0199	2,468.18
Bayonne, N. J., So. West, I. C. C. 76	19,976.52	.0306	611.28
Claremont, N. J., Buckeye, I. C. C. 212	512,446.94	.0731	37,459.93
Baltimore, Md., Prairie, I. C. C. 17	1,983,894.94	.0221	43,844.05
Morgantown, W. Va., Prairie, I. C. C. 48	189,324.94	.03	5,679.73
Philadelphia, Pa., Buckeye, I. C. C. 212	103,171.26	.0888	9,161.61
Philadelphia, Pa., Buckeye, I. C. C. 209	62,799.87	.0888	5,576.62
Philadelphia, Pa., Prairie, I. C. C. 43	297,577.14	.0254	7,558.47
Philadelphia, Pa., Cumberland, I. C. C. 36	4,690,838.14	.1723	808,231.75
Franklin, Pa., Buckeye, I. C. C. 212	227,483.27	.0811	18,448.89
Franklin, Pa., Buckeye, I. C. C. 212	12,314.08	.0389	479.02
Franklin, Pa., Buckeye, I. C. C. 209	31,857.61	.0811	2,583.65
Olean, N. Y., Buckeye, I. C. C. 212	134,308.93	.0334	4,485.95
Olean, N. Y., Buckeye, I. C. C. 212	500,039.71	.0832	41,603.35

	Barrels.	Rate.	Amount.
Olean, N. Y., Buckeye, I. C. C. 209	73,341.66	.0334	2,449.60
Olean, N. Y., Buckeye, I. C. C. 209	200,702.12	.0832	16,698.39
Bramell Point, N. J., Buckeye, I. C. C. 209	14,952.35	.0888	1,327.77
Pittsburgh, Pa., So. West, I. C. C. 75	6,424.50	.0515	330.87
Sundry Points, Pa., So. West, I. C. C. 85	54,049.01	.0515	2,783.53
Sundry Points, Pa., So. West, I. C. C. 85	26,455.48	.0306	809.54
	6,015,736.04		
Oil produced in West Virginia (but not run by The Eureka Pipe Line Co.) and delivered to other carriers on I. C. C. Tariffs:			
For Marcus Hook, Pa., Eureka, I. C. C. 158	229,099.60	.1334	30,561.89
Philadelphia, Pa., Eureka, I. C. C. 149	40,070.67	.1430	5,730.11
	269,170.27		
(Total deliveries for twelve months ending June 30, 1919—22,531,315.06 Bbls.)			
Amount forward			2,518,623.57
1416 Amount forward			2,518,623.57

LOOSE LEAF PLAN

No Supplement to this Tariff will be issued except for the purpose of canceling the Tariff.

Copy Pl Ex 5 Nov 20/19 (16) 1417

I. C. C. No. 212.
Cancels issues shown on page 1.

THE BUCKEYE PIPE LINE COMPANY

IN CONNECTION WITH LINES SHOWN ON PAGE 1.

Pl

JOINT TARIFF

The Rates named in this Tariff are for the Transportation of

CRUDE PETROLEUM OIL BY PIPE LINES,

subject to the regulations named herein

FROM

STATIONS ON

THE BUCKEYE PIPE LINE COMPANY

NAMED WITHIN

TO POINTS IN

NEW YORK, NEW JERSEY AND PENNSYLVANIA

ISSUED AUGUST 22, 1918. **EFFECTIVE OCTOBER 1, 1918.**

ISSUED BY

GEO. CHESEBRO', Secretary,

The Buckeye Pipe Line Company,

NEW YORK, N. Y.

LOOSE LEAF PLAN

No Supplement to this Tariff will be issued except for the purpose of canceling the Tariff.

1418

I. C. C. No. 212.
Cancels issues shown on page 1.

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IN CONNECTION WITH LINES SHOWN ON PAGE 1.

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NAMED WITHIN

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ISSUED AUGUST 22, 1918.

EFFECTIVE OCTOBER 1, 1918.

ISSUED BY

GEO. CHESEBRO', Secretary,
The Buckeye Pipe Line Company,
NEW YORK, N. Y.

(+39850)

TABLE OF CONTENTS.

	PAGE
Abbreviations, Explanation of	4
Cancellations effected by this tariff	1
Concurrences and participating carriers	1
Explanation of abbreviations	4
Instructions, General	4
Minimum shipment and batch requirements	7
Participating carriers and concurrences	1
Rates	8–9
Regulations	6
Routes	5
Routing regulations	5
Rules, General	4
Stations from which rates apply, alphabetically arranged	2
Stations from which rates apply, geographically arranged in groups	3
Stations to which rates apply, alphabetically arranged	8–9

TARIFF CANCELLED.

THE BUCKEYE PIPE LINE CO. I. C. C. No. 209.

Stations which appeared in the issue above named that have not been shown in this tariff have been discontinued.

PARTICIPATING CARRIERS AND CONCURRENCES.

LINES	CONCURRENCES.	
	Fx	No.
Eureka Pipe Line Company (The)	3	4
National Transit Company	3	4
New York Transit Company	3	8
Northern Pipe Line Company	3	1
South West Pennsylvania Pipe Lines	3	4
Southern Pipe Line Company	3	5
Standard Oil Company of New York	3	4
Tuscarora Oil Company, Limited	3	3

1420

STATIONS FROM WHICH RATES APPLY.

ALPHABETICALLY ARRANGED.

Group Letter	STATIONS	Group Letter	STATIONS
B	Adams.....Ohio	C	Harriettaville.....Ohio
C	Aiken.....Ohio	C	Harsha.....Ohio
B	Alliance.....Ohio	C	Haydenville.....Ohio
C	Barnesville.....Ohio	B	Howell.....Ohio
C	Beaver.....Ohio	B	Jewett.....Ohio
C	Belle Valley.....Ohio	C	Joy.....Ohio
C	Bells Run.....Ohio	B	Law.....Ohio
C	Benedict.....Ohio	A	Lima.....Ohio
B	Bergholz.....Ohio	B	Miller.....Ohio
C	Black Run.....Ohio	C	Mosier.....Ohio
C	Bremen.....Ohio	C	Payne.....Ohio
B	Bricker.....Ohio	C	Reas Run.....Ohio
C	Buck Run.....Ohio	C	Roseville.....Ohio
C	Captina.....Ohio	C	San Toy.....Ohio
C	Clarke.....Ohio	B	Scio.....Ohio
C	Compton.....Ohio	C	Scott.....Ohio
C	Corning.....Ohio	C	Sun Fish.....Ohio
B	Costonia.....Ohio	C	Trail Run.....Ohio
C	Cow Run.....Ohio	B	Uniontown.....Ohio
A	Cygnet.....Ohio	C	Warner.....Ohio
B	Elliott.....Ohio	C	Waterford.....Ohio
A	Findlay.....Ohio	C	Waters.....Ohio
C	Gore.....Ohio	B	Wellsville.....Ohio
C	Grandview.....Ohio	C	Whipple.....Ohio
C	Gratiot.....Ohio	C	Wilking.....Ohio
C	Gravel Bank.....Ohio	B	Wills Creek.....Ohio
B	Hamilton.....Ohio	C	Wolf Creek.....Ohio

STATIONS FROM WHICH RATES APPLY.

GEOGRAPHICALLY ARRANGED IN GROUPS.

GROUP A.

Cygnet.....Ohio	Findlay.....Ohio	Lima.....Ohio

GROUP B.

Costonia.....Ohio	Howell.....Ohio	Scio.....Ohio
Law.....Ohio	Elliott.....Ohio	Adams.....Ohio
Hamilton.....Ohio	Jewett.....Ohio	Alliance.....Ohio
Wellsville.....Ohio	Bricker.....Ohio	Uniontown.....Ohio
Wills Creek.....Ohio	Bergholz.....Ohio	Miller.....Ohio

GROUP C.

Bells Run.....Ohio	Whipple.....Ohio	Mosier.....Ohio
Harsha.....Ohio	Warner.....Ohio	Corning.....Ohio
Reas Run.....Ohio	Aiken.....Ohio	Clarke.....Ohio
Gravel Bank.....Ohio	Wolf Creek.....Ohio	San Toy.....Ohio
Grandview.....Ohio	Harriettsville.....Ohio	Gore.....Ohio
Trail Run.....Ohio	Beaver.....Ohio	Bremen.....Ohio
Cow Run.....Ohio	Barnesville.....Ohio	Roseville.....Ohio
Benedict.....Ohio	Captina.....Ohio	Gratiot.....Ohio
Payne.....Ohio	Joy.....Ohio	Haydenville.....Ohio
Scott.....Ohio	Waterford.....Ohio	Waters.....Ohio
Wilking.....Ohio	Buck Run.....Ohio	Compton.....Ohio
Sun Fish.....Ohio	Belle Valley.....Ohio	Black Run.....Ohio

EXPLANATIONS OF ABBREVIATIONS.

Eureka	The Eureka Pipe Line Company
Nat	National Transit Company
Nor	Northern Pipe Line Company
N. Y. T.	New York Transit Company
S. W. P.	South West Pennsylvania Pipe Lines
So	Southern Pipe Line Company
S. O. of N. Y.	Standard Oil Company of New York
Tusc	Tuscarora Oil Company, Limited

GENERAL INSTRUCTIONS.

1. This Tariff is issued on the "Loose-Leaf Plan," and all changes and additions will be made by reprinting the entire page in which any change, addition or elimination is necessary.

2. (a) When a page of this tariff is reprinted the first time, it will be designated "First revised page———."

   (b) Each subsequent reprint of such page will be numbered consecutively, i. e., "Second revised page———," "Third revised page———," etc.

   (c) When a page is added to this Tariff it will be designated "Added page———."

   (d) When an added page of this Tariff is reprinted the first time it will be designated "First revised added page———."

   (e) Each subsequent reprint of such pages will be numbered consecutively, i. e., "Second revised page———," "Third revised page———," etc., or "Second revised added page———," "Third revised added page———," etc., as the case may be.

   (f) Such pages as are cancelled by revised pages should be removed from the Tariff when the revised pages take effect.

3. It is important that users of this Tariff, promptly upon receipt of revised or added pages, carefully file such pages in proper place in the Tariff, as indicated by page number thereon.

GENERAL RULES.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amount to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

ROUTING REGULATIONS.

The routing specified herein is that ordinarily to be used. If from any cause arising from the exigencies of carriers, property is sent via other junction points or routes, but over the lines of carriers parties to the tariff, the rates named herein will apply.

ROUTING.

Route No.	ROUTE VIA.
1	Eureka, S.W.P., Nat. (Via Bear Creek, Pa.).
2	Eureka, S.W.P., Nat., Nor., Nat. (Via Bear Creek, Pa.).
3	Nor., Nat., Nor., N.Y.T. (Via Olean, N. Y.).
4	Eureka, S.W.P., Nat., S.W.P., Eureka, So., Nat., Tusc. (Via Morgantown, W. Va.).
5	Eureka, So., Nat., Tusc. (Via Morgantown, W. Va.).
6	Eureka, S.W.P., Nat., Nor., Nat., N.Y.T., S.O. of N.Y. (Via Bear Creek, Pa., and Olean, N. Y.).
7	Eureka, S.W.P., Nat., Nor., Nat., N.Y.T. (Via Bear Creek, Pa., and Olean, N. Y.).
8	Nor., Nat., Nor., N.Y.T., S.O. of N.Y. (Via Olean, N. Y.).
9	Eureka, S.W.P., Nat., S.W.P., Eureka, So. (Via Morgantown, W. Va.).
10	Eureka, So. (Via Morgantown, W. Va.).
11	Eureka, S.W.P., Nat., S.W.P. (Via Ewings, Pa.).
12	Nor., Nat., So., Nat. (Via Colegrove, Pa.).
13	Eureka, S.W.P. (Via Ewings, Pa.).
14	Eureka, S.W.P. Nat., Nor., Nat.• N.Y.T. (Via Bear Creek, Pa.).

For Explanation of Abbreviations, see Page 4.

REGULATIONS.

This Company will receive shipments of crude petroleum for transportation to established delivery stations on its own lines and lines of connecting pipe line companies, subject to the following conditions:

FIRST:—It will receive shipments of crude petroleum for transportation only when the consignor or consignee has provided the necessary facilities for taking delivery of said crude petroleum as it arrives at destination.

SECOND:—(Minimum Shipment and Batch Requirements)—see page 7

THIRD:—All such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in gravity or quality while in transit as may result from the mixture of such crude petroleum with other crude petroleum in the pipe lines or tanks of this, or the connecting company, or companies. Deliveries will be made to connecting carriers or consignees out of a common stock of crude petroleum of the same general kind and quality as that received from the shipper.

FOURTH:—This Company is engaged in the transportation of crude petroleum exclusively and will accept no other commodity for transportation.

FIFTH:—The consignor or consignee shall pay the transportation and all other lawful charges accruing on crude petroleum tendered for shipment, and, if required, shall pay the same in advance or before delivery. Crude petroleum accepted for transportation shall be subject to a lien for all such charges.

SIXTH:—No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, strikes, riots or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the owner shall stand the loss in the same proportion as the amount of the shipment in his name bears to the whole amount of the batch of which it is a part, and shall be entitled to recover only that portion of such shipment which is left after deducting his proportion of the loss, as above—statements of quantities ascertained and computed from the records in the usual manner by the carrier to be accepted as prima facie correct in the distribution of such losses under this rule: Provided, That, in the case of a loss by fire if there be held by the carrier on whose line the loss occurred any insurance against such loss the benefit of such insurance shall extend to the owner or party suffering the loss, so far as this shall not avoid the policies or contracts of insurance.

SEVENTH:—The amount of loss or damage for which the carrier is liable shall be computed on the market value of the oil lost or damaged at the place and time of shipment plus charges prepaid, if any.

EIGHTH:—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

NINTH:—A deduction of one per cent. (1%) under this tariff will be made from the amount of each shipment when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of crude petroleum by pipe line, and on this net quantity transportation charges will be assessed. For losses in excess of one per cent. (1%) this Company and participating carriers, except as otherwise provided herein, will be responsible.

TENTH:—Separate pipeage contracts in accord with this tariff and these regulations, covering further details, may be required of the proposed shipper before any duty of transportation shall arise.

MINIMUM SHIPMENT AND BATCH REQUIREMENTS.

Minima Letters	MINIMA
A	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) When such shipments singly or together with other shipments of the same kind and quality of crude petroleum, consigned to same destination, shall aggregate a batch of at least one hundred thousand (100,000) barrels at shipping point then such single shipments amounting to one hundred thousand (100,000) barrels, or more, or accumulated shipments aggregating a like amount of common stock oil, will be forwarded to destination.
B	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) Shipments as above will be transported, as received, from any or all of the points named in this tariff to Bear Creek, Pa., and when such shipments, together with other shipments of the same kind and quality of crude petroleum from these or any other point or points, consigned to the same destination via Bear Creek, Pa., shall aggregate a batch of at least seventy-five thousand (75,000) barrels at that point then the shipments under this tariff, as part of such batch of common stock oil, will be forwarded to destination.
C	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) Shipments as above will be transported, as received, from any or all of the points named in this tariff to Morgantown, W. Va., and when such shipments, together with other shipments of the same kind and quality of crude petroleum from these or any other point or points, consigned to same destination via Morgantown, W. Va., shall aggregate a batch of at least seventy-five thousand (75,000) barrels at that point then the shipments under this tariff, as part of such batch of common stock oil, will be forwarded to destination.
D	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) Shipments as above will be transported, as received, from any or all of the points named in this tariff to Bear Creek, Pa., and when such shipments, together with other shipments of the same kind and quality of crude petroleum from these or any other point or points, consigned to the same destination via Bear Creek, Pa., shall aggregate a batch of at least twenty-five thousand (25,000) barrels at that point then the shipments under this tariff, as part of such batch of common stock oil, will be forwarded to destination.
E	Crude petroleum of any specified kind (except as otherwise provided herein) will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination, via Ewings, Pa. (See Note.).

NOTE.—These shipments may, if desired, be made up of lots of one barrel or more offered by various parties at shipping points who shall designate one of their number or authorise some other party to act as the shipper.

RATES IN CENTS PER BARREL OF 42 U. S. GALLONS.

WITH MINIMA AND ROUTES APPLICABLE

Item No.	FROM Stations of Origin Named on Pages 2 and 3 — Taking Group Letters	TO Destination Stations Named Below	Rate	Minima See Page 7 — Minima Letters	Delivering Lines	Routing See Page 5 — Route No.
10	A		..	..	.....	..
11	B	*Allegheny ..... Pa.	..	..	.....	..
12	C		12	E	S. W. P	13
20	A		47	A	N Y T	3
21	B		33	B	N Y T	7
22	B	Bayonne ..... N. J.	33	C	Tusc.	4
23	C		33	B	N. Y. T.	7
24	C		33	C	Tusc.	5
30	A		..	..	.....	..
31	B	Bayway ..... N. J.	33	C	Tusc.	4
32	C		33	C	Tusc.	5
40	A		..	..	.....	..
41	B	Bramell Point (Paulsboro) ..... N. J.	33	C	So.	9
42	C		33	C	So.	10
50	A		..	..	.....	..
51	B	Claremont ..... N. J.	33	C	Tusc.	4
52	C		33	C	Tusc.	5
60	A		..	..	.....	..
61	B	*Coraopolis ..... Pa.	..	..	.....	..
62	C		12	E	S. W. P.	13
70	A		..	..	.....	..
71	B	*Franklin Station ..... Pa.	22	D	Nat.	1
72	C		22	D	Nat.	1
80	A		..	..	.....	..
81	B	*Freedom ..... Pa.	..	..	.....	..
82	C		12	E	S. W. P.	13
90	A		..	..	.....	..
91	B	*Lacy Station (Warren) ..... Pa.	29¼	D	Nat.	2
92	C		29¼	D	Nat.	2
100	A		..	..	.....	..
101	B	*Neville Island ..... Pa.	..	..	.....	..
102	C		12	E	S. W. P.	13

*Shipments of Corning Grade Crude Oil will not be accepted for transportation to points prefix-marked thus (*). No rates in effect on Corning Grade Crude Oil to such points.

For explanation of abbreviations, see page 4.

RATES IN CENTS PER BARREL OF 42 U. S. GALLONS.

WITH MINIMA AND ROUTES APPLICABLE.

Item No.	FROM Stations of Origin Named on Pages 2 and 3 — Taking Group Letters	TO Destination Stations Named Below	Rate	Minima See Page 7 — Minima Letters	Delivering Lines	Routing See Page 5 — Route Nos.
110	A	New York { Borough of Queens / Borough of Brooklyn } ..N. Y.	47	A	S. O. of N. Y.	8
111	B		33	B	S. O. of N. Y.	6
112	C		33	B	S. O. of N. Y.	6
120	A		..	..	.....	..
121	B	*Oak Grove..... Pa.	..	..	.....	..
122	C		12	E	S. W. P.	13
130	A		..	..	.....	..
131	B	*Olean.....N. Y.	30	D	N. Y. T.	14
132	C		30	D	N. Y. T.	14
140	A		47	A	Nat.	12
141	B	Philadelphia (Point Breeze)..... Pa.	33	C	So.	9
142	C		33	C	So.	10
150	A		..	..	.....	..
151	B	*Pittsburgh..... Pa.	..	..	.....	..
152	C		12	E	S. W. P.	11

*Shipments of Corning Grade Crude Oil will not be accepted for transportation to points prefix-marked thus (*). No rates in effect on Corning Grade Crude Oil to such points.

For explanation of abbreviations, see page 4.

Only one Supplement to this Tariff will be in effect at any time.

I. C. C. No. 209.
(For cancellations see Page 2.)

(17)

THE BUCKEYE PIPE LINE COMPANY

IN CONNECTION WITH LINES SHOWN ON PAGE 2

JOINT TARIFF

The Rates named in this Tariff are for the transportation of

CRUDE PETROLEUM OIL BY PIPE LINES,

subject to the regulations named herein

FROM

STATIONS ON

THE BUCKEYE PIPE LINE COMPANY

NAMED WITHIN

TO POINTS IN

NEW YORK, NEW JERSEY AND PENNSYLVANIA

ISSUED DECEMBER 23, 1915.

EFFECTIVE FEBRUARY 1, 1916.

ISSUED BY

GEO. CHESEBRO', Secretary,
The Buckeye Pipe Line Company,
NEW YORK, N. Y.

N. Y. 7934—500 Copies.

TABLE OF CONTENTS.

	PAGE
Abbreviations, Explanation of	5
Cancellations of tariffs	2
Concurrences and participating carriers	2
Explanation of abbreviations	5
Minimum shipment and batch requirements	8
Participating carriers and concurrences	2
Rates	9
Regulations	7
Routes	6
Rules, General	5
Stations from which rates apply, alphabetically arranged	3
Stations from which rates apply, geographically arranged in groups	4
Stations to which rates apply, alphabetically arranged	9

CANCELLATIONS.

This tariff cancels the following tariffs of The Buckeye Pipe Line Company:

I. C. C. No. 182	I. C. C. No. 189	I. C. C. No. 196	I. C. C. No. 202
I. C. C. No. 183	I. C. C. No. 190	I. C. C. No. 197	I. C. C. No. 203
I. C. C. No. 184	I. C. C. No. 191	I. C. C. No. 198	I. C. C. No. 204
I. C. C. No. 185	I. C. C. No. 192	I. C. C. No. 199	I. C. C. No. 205
I. C. C. No. 186	I. C. C. No. 193	I. C. C. No. 200	I. C. C. No. 206
I. C. C. No. 187	I. C. C. No. 194	I. C. C. No. 201	I. C. C. No. 207
I. C. C. No. 188	I. C. C. No. 195		

PARTICIPATING CARRIERS AND CONCURRENCES.

LINES	CONCURRENCES.	
	Fx	No.
Eureka Pipe Line Company (The)	3	4
National Transit Company	3	4
New York Transit Company	3	8
Northern Pipe Line Company	3	1
South West Pennsylvania Pipe Lines	3	4
Southern Pipe Line Company	3	5
Standard Oil Company of New York	3	4
Tuscarora Oil Company, Limited	3	3

1438

Supplement No. 4 contains all changes from the original Tariff that are effective on the date hereof.

Supplement No. 4 to
I. C. C. No. 209.
(Cancels Supplement No. 3.)

THE BUCKEYE PIPE LINE COMPANY

IN CONNECTION WITH LINES SHOWN IN TARIFF

JOINT TARIFF

Naming Rates for the Transportation of
CRUDE PETROLEUM OIL BY PIPE LINES,
subject to the regulations named in original tariff

FROM

STATIONS ON

THE BUCKEYE PIPE LINE COMPANY

TO POINTS IN

NEW YORK, NEW JERSEY AND PENNSYLVANIA

ADDITIONS, CANCELLATIONS AND CHANGES

(See Pages 2 and 3)

ISSUED MAY 14, 1918.

EFFECTIVE JUNE 20, 1918.
(Except as noted in Individual Items.)

ISSUED BY

GEO. CHESEBRO', Secretary,
The Buckeye Pipe Line Company,
NEW YORK, N. Y.

ADDITIONS, CANCELLATIONS AND CHANGES.

Reissued from Supplement No.	Effective	Page of Tariff Affected.	Change Tariff as Follows:	STATIONS FROM WHICH RATES APPLY, ALPHABETICALLY ARRANGED STATIONS
1	12-1-16	3	Add.....	Black Run.....Ohio. (Group No. 3)
1	12-1-16	3	Erase....	Mantua.....Ohio. (Group No. 4)

				STATIONS FROM WHICH RATES APPLY, GEOGRAPHICALLY ARRANGED STATIONS
1	12-1-16	4	Add.....	Black Run.....Ohio. (Group No. 3—after Compton, Ohio)
1	12-1-16	4	Erase.....	Mantua.....Ohio. (Group No. 4)

ROUTING.

				Route No.	ROUTE VIA
2	3-8-17	6	Add.....	14	Nor., Nat., So., Nat. (via Colegrove, Pa.)
●	6-20-18	6	Add.....	15	Eureka, S. W. P. (via Ewings, Pa.).

MINIMUM SHIPMENT AND BATCH REQUIREMENTS

				Minima Letters	MINIMA
●	6-20-18	8	Change ..	G	To read: ⑫Crude Petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination, via Ewings, Pa. (See Note.)

RATES IN CENTS PER BARREL OF 42 U. S. GALLONS, WITH MINIMA AND ROUTES APPLICABLE

				TO Destination Stations Named Below	FROM Stations of Origin Named on Pages 3 and 4 of Tariff Group Nos.	RATE	MINIMA See Page 8 of Tariff Minima Letters	DELIVERING LINES	ROUTING See Page 6 of Tariff Route Nos.
●	6-20-18	9	Add.....	♯Allegheny..... Pa.	3	12	G	S. W. P.	15
1	12-1-16	9	Add.....	Bramell Point (Paulsboro).....N. J.	2	33	C	So.	10
					3	33	C	So.	11

●Additions, Cancellations and Changes effected by this Supplement.
⑫Denotes reduction.
For explanation of abbreviations, see page 5 of Tariff.
For explanation of reference marks, see page 3 of this Supplement.

ADDITIONS, CANCELLATIONS AND CHANGES—Continued.

Reissued from Supplement No.	Effective	Page of Tariff Affected	Change Tariff as Follows:	RATES IN CENTS PER BARREL OF 42 U. S. GALLONS, WITH MINIMA AND ROUTES APPLICABLE					
				TO Destination Stations Named Below	FROM Stations of Origin Named on Pages 3 and 4 of Tariff Group Nos.	Rate	Minima See Page 8 of Tariff Minima Letters	Delivering Lines	Routing See Page 6 of Tariff Route Nos.
●	6-20-18	9	Add.....	‡Corsopolis..... Pa.	3	12	G	S. W. P.	15
●	6-20-18	9	Add.....	‡Freedom..... Pa.	3	12	G	S. W. P.	15
●	6-20-18	9	Add.....	‡Neville Island..... Pa.	3	12	G	S. W. P.	15
2	3-8-17	9	Add.....	New York {Borough of Queens / Borough of Brooklyn} N.Y.	1	47	A	S.O. of N.Y.	9
●	6-20-18	9	Add.....	‡Oak Grove..... Pa.	3	12	G	S. W. P.	15
2	3-8-17	9	Add.....	Philadelphia (Point Breeze Sta.)...Pa.	1	47	A	Nat.	14
●	6-20-18	9	Change....	‡Pittsburgh..... Pa.	3	⊛12	G	S. W. P.	12
1	12-1-16	9	Erase...	Group No. 4, rates therefrom, and minima, delivering line and route references in connection therewith, to all points. No rates in effect from Group No. 4 (Mantua, Ohio), to any point of destinations named in the tariff.					
3	12-20-17	9	Change..	Franklin Sta., Pa., Lacy Sta. (Warren), Pa., Olean, N. Y., and Pittsburgh, Pa., by prefixing reference marks—"‡".					
●	6-20-18	9	Change..	Paragraph prefixed "‡" (added by Supplement No. 3, effective Dec. 20, 1917), to read; ‡Shipments of Corning Grade Crude Oil will not be accepted for transportation to Allegheny, Corsopolis, †Franklin Sta., Freedom, †Lacy Sta. (Warren), Neville Island, Oak Grove, †Pittsburgh, Pa., or †Olean, N. Y. No rates in effect on Corning Grade Crude Oil to these points.					

●Additions, Cancellations and Changes effected by this Supplement.
⊛Denotes Reduction.
† Reissued from Supplement No. 3, effective December 20, 1917.
For explanation of abbreviations, see page 5 of Tariff.
For explanation of reference marks, see page 3 of this Supplement.

Supplement No. 2 contains all changes from the original Tariff that are effective on the date hereof.

Supplement No. 2 to
I. C. C. No. 209.
(Cancels Supplement No. 1.)

THE BUCKEYE PIPE LINE COMPANY

IN CONNECTION WITH LINES SHOWN IN TARIFF

JOINT TARIFF

Naming Rates for the Transportation of
CRUDE PETROLEUM OIL BY PIPE LINES,
subject to the regulations named in original tariff

FROM

STATIONS ON

THE BUCKEYE PIPE LINE COMPANY

TO POINTS IN

NEW YORK, NEW JERSEY AND PENNSYLVANIA

ADDITIONS, CANCELLATIONS AND CHANGES

(See Page 2)

ISSUED FEBRUARY 5, 1917.

EFFECTIVE MARCH 8, 1917.
(Except as noted in Individual Items.)

ISSUED BY
GEO. CHESEBRO', Secretary,
The Buckeye Pipe Line Company,
NEW YORK, N. Y.

ADDITIONS, CANCELLATIONS AND CHANGES.

Reissued from Supplement No.	Effective	Page of Tariff Affected.	Change Tariff as Follows:	STATIONS FROM WHICH RATES APPLY, ALPHABETICALLY ARRANGED STATIONS
1	12-1-16	3	Add.....	Black Run.....Ohio. (Group No. 3)
1	12-1-16	3	Erase....	Mantua.....Ohio. (Group No. 4)

Reissued from Supplement No.	Effective	Page of Tariff Affected.	Change Tariff as Follows:	STATIONS FROM WHICH RATES APPLY, GEOGRAPHICALLY ARRANGED STATIONS
1	12-1-16	4	Add.....	Black Run.....Ohio. (Group No. 3—after Compton, Ohio)
1	12-1-16	4	Erase.....	Mantua.....Ohio. (Group No. 4)

RATES IN CENTS PER BARREL OF 42 U. S. GALLONS, WITH RATES AND ROUTES APPLICABLE

Reissued from Supplement No.	Effective	Page of Tariff Affected.	Change Tariff as Follows:	TO Destination Stations Named Below	FROM Stations of Origin Named on Pages 3 and 4 of Tariff Group Nos.	Rate	Minima See Page 8 of Tariff Minima Letters	Delivering Lines	Routing See Page 6 of Tariff Route Nos.
1	12-1-16	9	Add.....	Bramell Point (Paulsboro).....N. J.	2	33	C	So.	10
					3	33	C	So.	11
1	12-1-16	9	Erase.. .	Group No. 4, rates therefrom, and minima, delivering line and route references in connection therewith, to all points. No rates in effect from Group No. 4 (Mantua, Ohio) to any point of destination named in the tariff.					
●	3-8-17	9	Add.....	New York {Borough of Queens / Borough of Brooklyn} N.Y.	1	47	A	S.O. of N.Y.	9
●	3-8-17	9	Add.....	Philadelphia (Point Breeze Sta.)...Pa.	1	47	A	Nat.	14

ROUTING.

Reissued from Supplement No.	Effective	Page of Tariff Affected.	Change Tariff as Follows:	Route No.	ROUTE VIA
●	3-8-17	6	Add.....	14	Nor., Nat., So., Nat. (Via Colegrove, Pa.)

●Additions, Cancellations and Changes effected by this Supplement.
For explanation of abbreviations, see page 5 of Tariff.

STATIONS FROM WHICH RATES APPLY.

ALPHABETICALLY ARRANGED.

Group No.	STATIONS	Group No.	STATIONS
2	Adams.....Ohio	2	Hamilton.....Ohio
3	Aiken.....Ohio	3	Harriettsville.....Ohio
2	Alliance.....Ohio	3	Harsha.....Ohio
3	Barnesville.....Ohio	3	Haydenville.....Ohio
3	Beaver.....Ohio	2	Howell.....Ohio
3	Belle Valley.....Ohio	2	Jewett.....Ohio
3	Bells Run.....Ohio	3	Joy.....Ohio
3	Benedict.....Ohio	2	Law.....Ohio
2	Bergholz.....Ohio	1	Lima.....Ohio
3	Bremen.....Ohio	4	Mantua.....Ohio
2	Bricker.....Ohio	2	Miller.....Ohio
3	Buck Run.....Ohio	3	Mosier.....Ohio
3	Captina.....Ohio	3	Payne.....Ohio
3	Chandlersville.....Ohio	3	Pool.....Ohio
3	Clarke.....Ohio	3	Reas Run.....Ohio
3	Compton.....Ohio	3	Roseville.....Ohio
3	Corning.....Ohio	3	San Toy.....Ohio
2	Costonia.....Ohio	2	Scio.....Ohio
3	Cow Run.....Ohio	3	Scott.....Ohio
1	Cygnet.....Ohio	3	Sun Fish.....Ohio
3	Deible.....Ohio	3	Trail Run.....Ohio
2	Elliott.....Ohio	2	Uniontown.....Ohio
1	Findlay.....Ohio	3	Warner.....Ohio
3	Fox.....Ohio	3	Waters.....Ohio
3	Gore.....Ohio	2	Wellsville.....Ohio
3	Grandview.....Ohio	3	Wilking.....Ohio
3	Gratiot.....Ohio	2	Wills Creek.....Ohio
3	Gravel Bank.....Ohio	3	Wolf Creek.....Ohio

(Union Furnace and Stevenson, Ohio, stations abandoned.)

1436

STATIONS FROM WHICH RATES APPLY.

GEOGRAPHICALLY ARRANGED IN GROUPS.

GROUP No. 1.

Cygnet.....Ohio	Findlay.....Ohio	Lima.....Ohio

GROUP No. 2.

Coetonia.....Ohio	Howell.....Ohio	Scio.....Ohio
Law.....Ohio	Elliott.....Ohio	Adams.....Ohio
Hamilton.....Ohio	Jewett.....Ohio	Alliance.....Ohio
Wellsville.....Ohio	Bricker.....Ohio	Uniontown.....Ohio
Wills Creek.....Ohio	Bergholz.....Ohio	Miller.....Ohio

GROUP No. 3.

Bells Run.....Ohio	Sun Fish.....Ohio	Corning.....Ohio
Harsha.....Ohio	Warner.....Ohio	Clarke.....Ohio
Rees Run.....Ohio	Aiken.....Ohio	San Toy.....Ohio
Gravel Bank.....Ohio	Wolf Creek.....Ohio	Deible.....Ohio
Grandview.....Ohio	Harriettaville.....Ohio	Gore.....Ohio
Trail Run.....Ohio	Beaver.....Ohio	Bremen.....Ohio
Cow Run.....Ohio	Barnesville.....Ohio	Roseville.....Ohio
Benedict.....Ohio	Captina.....Ohio	Chandlersville.....Ohio
Payne.....Ohio	Joy.....Ohio	Gratiot.....Ohio
Fox.....Ohio	Buck Run.....Ohio	Haydenville.....Ohio
Scott.....Ohio	Belle Valley.....Ohio	Waters.....Ohio
Pool.....Ohio	Mosier.....Ohio	Compton.....Ohio
Wilking.....Ohio		

(Union Furnace and Stevenson, Ohio, stations abandoned.)

GROUP No. 4.

Mantua.....Ohio

EXPLANATION OF ABBREVIATIONS.

Eureka	The Eureka Pipe Line Company
Nat	National Transit Company
Nor	Northern Pipe Line Company
N. Y. T.	New York Transit Company
S. W. P.	South West Pennsylvania Pipe Lines
So	Southern Pipe Line Company
S. O. of N. Y.	Standard Oil Company of New York
Tusc	Tuscarora Oil Company, Limited

GENERAL RULES.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amount to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

1408

ROUTING REGULATIONS.

The routing specified herein is that ordinarily to be used. If from any cause arising from the exigencies of carriers, property is sent via other junction points or routes but over the lines of carriers parties to the tariff, the rates named herein will apply.

ROUTING.

Route No.	ROUTE VIA.
1	Eureka, S.W.P., Nat. (Via Bear Creek, Pa.)
2	Eureka, S.W.P., Nat., Nor., Nat. (Via Bear Creek, Pa.).
3	Nor., Nat., Nor., N.Y.T. (Via Olean, N. Y.).
4	Eureka, S.W.P., Nat., S.W.P., Eureka, So., Nat., Tusc. (Via Morgantown, W. Va.).
5	Eureka, So., Nat., Tusc. (Via Morgantown, W. Va.).
6	S.W.P., Eureka, So., Nat., Tusc. (Via Morgantown, W. Va.).
7	Eureka, S.W.P., Nat., Nor., Nat., N.Y.T., S.O. of N.Y. (Via Bear Creek, Pa., and Olean, N. Y.).
8	Eureka, S.W.P., Nat., Nor., Nat., N.Y.T. (Via Bear Creek, Pa., and Olean, N. Y.).
9	Nor., Nat., Nor., N.Y.T., S.O. of N.Y. (Via Olean, N. Y.).
10	Eureka, S.W.P., Nat., S.W.P., Eureka, So. (Via Morgantown, W. Va.).
11	Eureka, So. (Via Morgantown, W. Va.).
12	Eureka, S.W.P., Nat., S.W.P. (Via Ewings, Pa.).
13	S.W.P., Eureka, So. (Via Morgantown, W. Va.).

For Explanation of Abbreviations, see Page 5.

REGULATIONS.

This Company will receive shipments of crude petroleum for transportation to established delivery stations on its own lines and lines of connecting pipe line companies, subject to the following conditions:

FIRST:—It will receive shipments of crude petroleum for transportation only when the consignor or consignee has provided the necessary facilities for taking delivery of said crude petroleum as it arrives at destination.

SECOND:—(Minimum shipment and Batch Requirements, see page 8.)

THIRD:—All such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in gravity or quality while in transit as may result from the mixture of such crude petroleum with other crude petroleum in the pipe lines or tanks of this, or the connecting company, or companies. Deliveries will be made to connecting carriers or consignees out of a common stock of crude petroleum of the same general kind and quality as that received from the shipper.

FOURTH:—This Company is engaged in the transportation of crude petroleum exclusive and will accept no other commodity for transportation.

FIFTH:—The consignor or consignee shall pay the transportation and all other lawful charges accruing on crude petroleum tendered for shipment, and, if required, shall pay the same in advance or before delivery. Crude petroleum accepted for transportation shall be subject to a lien for all such charges.

SIXTH:—No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, strikes, riots or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the owner shall stand the loss in the same proportion as the amount of the shipment in his name bears to the whole amount of the batch of which it is a part, and shall be entitled to recover only that portion of such shipment which is left after deducting his porportion of the loss, as above—statements of quantities ascertained and computed from the records in the usual manner by the carrier to be accepted as *prima facie* correct in the distribution of such losses under this rule: Provided, That, in the case of a loss by fire if there be held by the carrier on whose line the loss occurred any insurance against such loss the benefit of such insurance shall extend to the owner or party suffering the loss, so far as this shall not avoid the policies or contracts of insurance.

SEVENTH:—The amount of loss or damage for which the carrier is liable shall be computed on the market value of the oil lost or damaged at the place and time of shipment plus charges prepaid, if any.

EIGHTH:—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

NINTH:—A deduction of one per cent. (1%) under this tariff will be made from the amount of each shipment when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of crude petroleum by pipe line, and on this net quantity transportation charges will be assessed. For losses in excess of one per cent. (1%) this Company and participating carriers, except as otherwise provided herein, will be responsible.

TENTH:—Separate pipeage contracts in accord with this tariff and these regulations, covering further details, may be required of the proposed shipper before any duty of transportation shall arise.

MINIMUM SHIPMENT AND BATCH REQUIREMENTS.

Minima Letters	MINIMA
A	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) When such shipments singly or together with other shipments of the same kind and quality of crude petroleum, consigned to same destination, shall aggregate a batch of at least one hundred thousand (100,000) barrels at shipping point then such single shipments amounting to one hundred thousand (100,000) barrels, or more, or accumulated shipments aggegating a like amount of common stock oil, will be forwarded to destination.
B	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) Shipments as above will be transported, as received, from any or all of the points named in this tariff to Bear Creek, Pa., and when such shipments, together with other shipments of the same kind and quality of crude petroleum from these or any other point or points, consigned to the same destination via Bear Creek, Pa., shall aggregate a batch of at least seventy-five thousand (75,000) barrels at that point then the shipments under this tariff, as part of such batch of common stock oil, will be forwarded to destination.
C	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) Shipments as above will be transported, as received, from any or all of the points named in this tariff to Morgantown, W. Va., and when such shipments, together with other shipments of the same kind and quality of crude petroleum from these or any other point or points, consigned to same destination via Morgantown, W. Va., shall aggregate a batch of at least seventy-five thousand (75,000) barrels at that point then the shipments under this tariff, as part of such batch of common stock oil, will be forwarded to destination.
D	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) When such shipments singly or together with other shipments of the same kind and quality of crude petroleum, consigned to same destination, shall aggregate a batch of at least seventy-five thousand (75,000) barrels at shipping point then such single shipments amounting to seventy-five thousand (75,000) barrels, or more, or accumulated shipments aggregating a like amount of common stock oil, will be forwarded to destination.
E	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) Shipments as above will be transported, as received, from any or all of the points named in this tariff to Bear Creek, Pa., and when such shipments, together with other shipments of the same kind and quality of crude petroleum from these or any other point or points, consigned to same destination via Bear Creek, Pa., shall aggregate a batch of at least twenty-five thousand (25,000) barrels at that point then the shipments under this tariff, as part of such batch of common stock oil, will be forwarded to destination.
F	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) When such shipments singly or together with other shipments of the same kind and quality of crude petroleum, consigned to same destination, shall aggregate a batch of at least twenty-five thousand (25,000) barrels at shipping point then such single shipments amounting to twenty-five thousand (25,000) barrels, or more, or accumulated shipments aggregating a like amount of common stock oil, will be forwarded to destination.
G	Crude petroleum of any specified kind will be accepted for transportation under this tariff in shipments of not less than one thousand (1,000) barrels from one consignor consigned to one consignee and destination. (See Note.) Shipments as above will be transported, as received, from any or all of the points named in this tariff to Ewings, Pa., and when such shipments, together with other shipments of the same kind and quality of crude petroleum from these or any other point or points, consigned to same destination via Ewings, Pa., shall aggregate a batch of at least twenty-five thousand (25,000) barrels at that point then the shipments under this tariff, as part of such batch of common stock oil, will be forwarded to destination.

NOTE.—These shipments may, if desired, be made up of lots of one barrel or more offered by various parties at shipping points who shall designate one of their number or authorize some other party to act as the shipper.

1447

RATES IN CENTS PER BARREL OF 42 U. S. GALLONS,

WITH MINIMA AND ROUTES APPLICABLE.

TO Destination Stations Named Below	FROM Stations of Origin Named on Pages 3 and 4 — Group Nos.	Rate	Minima See Page 8 — Minima Letters	Delivering Lines	Routing See Page 6 — Route Nos.
Bayonne.....N. J.	1	47	A	N. Y. T.	3
	2	33	B	N. Y. T.	8
			C	Tusc.	4
	3	33	B	N. Y. T.	8
			C	Tusc.	5
	4	33	D	N. Y. T.	3
				Tusc.	6
Bayway.....N. J.	1	..	..	.....	..
	2	33	C	Tusc.	4
	3	33	C	Tusc.	5
	4	33	D	Tusc.	6
Franklin Station..... Pa.	1	..	..	.....	..
	2	22	E	Nat.	1
	3	22	E	Nat.	1
	4	..	..	.....	..
Lacy Station (Warren)..... Pa.	1	..	..	.....	..
	2	29½	E	Nat.	2
	3	29½	E	Nat.	2
	4	..	..	.....	..
New York { Borough of Queens / Borough of Brooklyn }.....N. Y.	1	..	..	.....	..
	2	33	B	S. O. of N. Y.	7
	3	33	B	S. O. of N. Y.	7
	4	33	D	S. O. of N. Y.	9
Olean.....N. Y.	1	..	..	.....	..
	2	30	E	N. Y. T.	8
	3	30	E	N. Y. T.	8
	4	30	F	N. Y. T.	3
Philadelphia (Point Breeze Sta.)..... Pa.	1	..	..	.....	..
	2	33	C	So.	10
	3	33	C	So.	11
	4	33	D	So.	13
Pittsburgh..... Pa.	1	..	..	.....	..
	2	..	..	.....	..
	3	22	G	S. W. P.	12
	4	..	..	.....	..

For Explanation of Abbreviations, see Page 5.

No Supplement to this Tariff will be issued except for the purpose of canceling the Tariff.

(18)

I. C. C. No. 33.

THE PRAIRIE PIPE LINE COMPANY

IN CONNECTION WITH

THE ILLINOIS PIPE LINE COMPANY (F X 3-No. 2)
TUSCARORA OIL COMPANY, LTD. (F X 3-No. 1)
SOUTH WEST PENNSYLVANIA PIPE LINES (F X 3-No. 9)
THE EUREKA PIPE LINE COMPANY (F X 3-No. 9)
SOUTHERN PIPE LINE COMPANY (F X 3-No. 10)
NATIONAL TRANSIT COMPANY (F X 3-No. 9)

JOINT TARIFF

The rate named in this tariff is for the transportation of Crude Petroleum Oil by pipe lines, subject to the regulations named herein.

FROM	VIA	TO	Rate per bbl. of 42 U. S. gallons
HUMBOLDT STATION, KANSAS, ARGO STATION, KANSAS, COBB STATION, KANSAS, BARTLESVILLE STATION, OKLA., CREEK STATION, OKLA., MANUEL STATION, OKLA., INDIAN STATION, OKLA., CHEROKEE STATION, OKLA., CAPTAIN CREEK STATION, OKLA.	Wood River..... Ill. Negley..... Ohio Cooks Ferry..... Pa. and Centerbridge..... Pa.	BAYONNE, NEW JERSEY BAYWAY, NEW JERSEY	70 CTS.

In addition, all oil tendered for shipment in Kansas and Oklahoma accessible to the gathering lines of this company will be subject to a further gathering charge of twelve (12c) cents per barrel.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

ISSUED JANUARY 4, 1916

EFFECTIVE FEBRUARY 12, 1916

ISSUED BY
C. H. KOUNTZ, Vice-President,
THE PRAIRIE PIPE LINE COMPANY,
INDEPENDENCE, KANSAS.

(+M12443)

1443

REGULATIONS

This Company will receive crude petroleum for interstate transportation only to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST:—It will receive crude petroleum for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving said crude petroleum as it arrives at destination.

SECOND:—Orders for the shipment of any specified kind of such crude petroleum shall only become effective when orders from the shipper, in connection with orders from other shippers, for the same kind and quality of crude petroleum shall amount in the aggregate to one hundred thousand (100,000) barrels, or more, consigned to the same point of delivery; and subject to this requirement, orders for shipment shall become operative in the order in which they shall have been received.

THIRD:—It will forward such crude petroleum when there has been tendered to it by the shipper, individually, or by him and others, a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than one hundred thousand (100,000) barrels, all of which shall be consigned for delivery to the same delivery point.

FOURTH:—All such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in gravity or quality while in transit as may result from the mixture of said crude petroleum with other crude petroleum in the pipe lines or tanks of this, or the connecting company, or companies.

FIFTH:—Crude petroleum will be accepted for transportation only when free from all liens and charges.

SIXTH:—This Company is engaged in the transportation of crude petroleum exclusively and therefore will not accept any other commodity for transportation.

SEVENTH:—The shipper or consignee shall pay the transportation and all other lawful charges accruing on crude petroleum tendered for shipment and, if required, shall pay the same before delivery. Crude petroleum accepted for transportation shall be subject to a lien for all such charges.

EIGHTH:—No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, strikes, riots or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above.

NINTH:—The amount of loss or damage, if any, for which the carrier shall be liable will be based upon the market value of the oil lost or damaged at the place and time of shipment plus the freight charges prepaid to the point of consignment, if any.

TENTH:—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

ELEVENTH:—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of crude petroleum by pipe lines.

TWELFTH:—Separate pipeage contracts in accord with this tariff and these regulations, covering further details, may be required of the proposed shipper before any duty of transportation shall arise.

S.R.P.L.

1444

Plaintiff's Exhibits 8, 9, 10, 12, 13 and 14 are tariffs filed by The Prairie Pipe Line Co. and contain regulations identical with those printed in Plaintiff's Exhibit 7; the other contents of these exhibits are shown below in condensed form.

E X H I B I T #8 I.C.C. No. 30 JOINT TARIFF

IN CONNECTION WITH	FROM	VIA	TO	RATE PER BBL.
The Illinois Pipe Line Company (F X 3-No.2) Indiana Pipe Line Company (F X 3-No.1) The Buckeye Pipe Line Company (F X 3-No. 4) South West Pennsylvania Pipe Lines (F X 3-No.9) The Eureka Pipe Line Company (F X 3-No. 9) Southern Pipe Line Company (F X 3-No.10) National Transit Company (F X 3-No. 9) Tuscarora Oil Company, Ltd. (F X 3-No. 1)	Humboldt Station, Kansas. Argo Station, Kansas. Cobb Station, Kansas. Bartlesville Station, Okla. Creek Station Okla. Manuel Station, Okla. Indian Station, Okla. Cherokee Station, Okla. Captain Creek Station, Okla.	Wood River Ill. Preble, Ind. and Morgantown W. Va.	BAYONNE, NEW JERSEY BAYWAY, NEW JERSEY	70 CTS

ISSUED January 4, 1916. EFFECTIVE February 12, 1916.

1445

EXHIBIT #9 I.C.C. No. 66 JOINT TARIFF

IN CONNECTION WITH	FROM	VIA	TO	RATE PER BBL.
The Illinois Pipe Line Company (F X 3-No. 2) Tuscarora Oil Company, Ltd. (F X 3-No. 1) South West Pennsylvania Pipe Lines (F X 3-No. 9) The Eureka Pipe Line Company (F X 3-No. 9) Southern Pipe Line Company (F X 3-No. 10) National Transit Company (F X 3-No. 9)	Tiffin Station, Texas	Wood River, Ill. Negley, Ohio. Cooks Ferry, Pa. and Centerbridge, Pa.	BAYONNE, NEW JERSEY BAYWAY, NEW JERSEY	100 CTS.

ISSUED November 30, 1918 EFFECTIVE December 5, 1918

EXHIBIT #10 I.C.C. No. 58 JOINT TARIFF

IN CONNECTION WITH	FROM	VIA	TO	RATE PER BBL.
Yarhola Pipe Line Company (F X 3-No. 1) The Illinois Pipe Line Company (F X 3-No. 2) Indiana Pipe Line Company (F X 3-No. 1) The Buckeye Pipe Line Company (F X 3-No. 4) South West Pennsylvania Pipe Lines (F X 3-No. 9) The Eureka Pipe Line Company (F X 3-No. 9) Southern Pipe Line Company (F X 3-No. 10) National Transit Company (F X 3-No. 9) Tuscarora Oil Company, Ltd. (F X 3-No. 1)	CUSHING STATION, OKLA.	Wood River, Ill. Preble, Ind. and Morgantown, W. Va.	BAYONNE, NEW JERSEY. BAYWAY, NEW JERSEY	70 CTS.

ISSUED November 6, 1918 EFFECTIVE November 9, 1918

E X H I B I T #12 I.C.C. No. 17 JOINT TARIFF

IN CONNECTION WITH	FROM	VIA	TO	RATE PER BBL.
Indiana Pipe Line Company, F X 3 No. 1 The Buckeye Pipe Line Company, F X 3 No. 4 South West Pennsylvania Pipe Lines, F X 3 No. 9 The Eureka Pipe Line Company, F X 3 No. 9 Southern Pipe Line Company, F X 3 No. 10 National Transit Company, F X 3 No. 9 The Maryland Pipe Line Company, F X 3 No. 1	Humboldt Station, Kansas. Argo Station, Kansas. Cobb Station, Kansas. Bartlesville Station, Okla. Creek Station, Okla. Manuel Station, Okla. Indian Station, Okla. Cherokee Station, Okla. Captain Creek Station, Okla.	Griffith, Ind. and Morgantown, W. Va.	BALTIMORE STATION, MD.	70 CTS.

ISSUED September 3, 1915 EFFECTIVE October 16, 1915

E X H I B I T #13 I.C.C. No. 48 JOINT TARIFF

IN CONNECTION WITH	FROM	VIA	TO	RATE PER BBL.
The Illinois Pipe Line Company (F X 3-No. 2) Tuscarora Oil Company, Ltd. (F X 3-No. 1) South West Pennsylvania Pipe Lines (F X 3-No.9) The Eureka Pipe Line Company (F X 3-No. 9)	Humboldt Station, Kansas Argo Station, Kansas. Cobb Station, Kansas. Bartlesville Station, Okla. Creek Station, Okla. Manuel Station, Okla. Indian Station, Okla. Cherokee Station, Okla. Captain Creek Station, Okla.	Wood River, Ill. Negley, Ohio. and Cooks Ferry, Pa.	MORGANTOWN, W. VA.	62 CTS.

ISSUED August 11, 1916 EFFECTIVE September 15, 1916

EXHIBIT #14 I.C.C. No. 43. JOINT TARIFF

IN CONNECTION WITH	FROM	VIA	TO	RATE PER BBL.
The Illinois Pipe Line Company (F X 3-No. 2) Tuscarora Oil Company, Ltd. (F X 3-No. 1) South West Pennsylvania Pipe Lines (F X 3-No. 9) The Eureka Pipe Line Company (F X 3-No. 9) Southern Pipe Line Company (F X 3-No. 10)	Humboldt Station, Kansas. Argo Station, Kansas. Cobb Station, Kansas. Bartlesville Station, Okla. Creek Station, Okla. Manuel Station, Okla. Indian Station, Okla. Cherokee Station, Okla. Captain Creek Station, Okla.	Wood River, Ill. Negley, Ohio. and Cooks Ferry, Pa.	PHILADELPHIA, PA. (Point Breeze Station)	70 CTS.

ISSUED January 4, 1916 EFFECTIVE February 12, 1916

Cancelled & Superseded by I. C. C. No. 84 Issued Effective Sept 10 1918 1448 Bl. Ex. 11 Boom nov 20/19

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

(183)

I. C. C. No. 76

Cancels I. C. C. No. 70

SOUTH WEST PENNSYLVANIA PIPE LINES

IN CONNECTION WITH

THE EUREKA PIPE LINE COMPANY *F X 3 No. 2*
SOUTHERN PIPE LINE COMPANY *F X 3 No. 2*
NATIONAL TRANSIT COMPANY *F X 3 No. 1*
TUSCARORA OIL COMPANY, Limited *F X 3 No. 6*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM		TO	RATE PER BARREL OF 42 U. S. GALLONS
EWINGS, PA MINOR, PA. MT. MORRIS, PA. FUNK, PA. FONNER, PA.	VIA MORGANTOWN, W. VA.	BAYONNE, N. J. BAYWAY, N. J.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 31, 1916.

Effective March 1, 1916.

	Month	Day	Year
Received			
Filed			

ISSUED BY
E. R. SHEPARD
SECRETARY, SOUTH WEST PENNSYLVANIA PIPE LINES
OIL CITY, PA.

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Morgantown, West Virginia, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels at Morgantown, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of South West Pennsylvania Pipe Lines, The Eureka Pipe Line Company, Southern Pipe Line Company, and National Transit Company.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

* SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

* CHANGE.

Cancelled & superseded by 2000 No. Eureka Pipe Line Co. Southern Pipe Line Co. Eastern Gas & Fuel Co. 1450 Rec. & 15 Days Nov 20/19 V

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 36
Cancels I. C. C. No. 32

CUMBERLAND PIPE LINE COMPANY
(INCORPORATED)

IN CONNECTION WITH

THE EUREKA PIPE LINE COMPANY *F X 3 No. 3*

SOUTHERN PIPE LINE COMPANY *F X 3 No. 4*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM		TO	RATE PER BARREL OF 42 U. S. GALLONS
BEAVER CREEK, KENTUCKY BUSSEYVILLE, " LEWIS, " MANCHESTER, " PAGE HOLLOW, " SOMERSET, " STILLWATER, "	VIA MORGANTOWN, W. VA.	PHILADELPHIA (Point Breeze Sta.), PA.	50 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 31, 1916.

Effective March 1, 1916.

	Month	Day	Year
Received			
Filed			

ISSUED BY
E. R. SHEPARD
SECRETARY, CUMBERLAND PIPE LINE COMPANY
(INCORPORATED)
OIL CITY, PA.

1451

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Morgantown, West Virginia, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels at Morgantown, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of the participating carriers.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

1452 Cancelled & Superseded by I.C.C. No. Sup 1 Issued Effective Aug 1 1918

P.E. Ex. 16 Dom. Nov 20/19

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 75

Cancels I. C. C. No. 65

SOUTH WEST PENNSYLVANIA PIPE LINES

IN CONNECTION WITH

THE EUREKA PIPE LINE COMPANY F X 3 No. 2

THE BUCKEYE PIPE LINE COMPANY F X 3 No. 1

NATIONAL TRANSIT COMPANY F X 3 No. 1

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM		TO	RATE PER BARREL OF 42 U. S. GALLONS
GEORGETOWN, PA. ISLAND RUN, PA. MINOR, PA. SANDS, PA.	VIA NEDSKEY, PA.	PITTSBURGH, PA.	12 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 31, 1916.

Effective March 1, 1916.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, SOUTH WEST PENNSYLVANIA PIPE LINES

OIL CITY, PA.

1453

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Nedskey, Pennsylvania, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least one thousand (1,000) barrels at Nedskey, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of South West Pennsylvania Pipe Lines, The Eureka Pipe Line Company, and National Transit Company or of any other participating carrier if insured against loss by fire.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

* CHANGE.

Copy

Dec Ex. 7 Issue
Nov 20/19

1454-1455

SUPPLEMENT No. 1
TO
I. C. C. No. 75

SOUTH WEST PENNSYLVANIA PIPE LINES

IN CONNECTION WITH

LINES SHOWN IN TARIFF

CANCELLATION

OF

JOINT TARIFF

FROM

STATIONS IN PENNSYLVANIA NAMED IN TARIFF

TO

PITTSBURGH, PA.

Effective August 1, 1918. Joint Tariff I. C. C. No. 75 will be withdrawn and cancelled.

NO RATE IN EFFECT

Issued July 1, 1918.

Effective August 1, 1918

ISSUED BY
E. R. SHEPARD,
SECRETARY, SOUTH WEST PENNSYLVANIA PIPE LINES
OIL CITY, PA.

Nov 20/19

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 85
P. S. C. Pa. No. 10
Cancels
I. C. C. No. 83
P. S. C. Pa. No. 8

SOUTH WEST PENNSYLVANIA PIPE LINES

IN CONNECTION WITH

THE EUREKA PIPE LINE COMPANY *F X 3 No. 2*
THE BUCKEYE PIPE LINE COMPANY *F X 3 No. 1*
NATIONAL TRANSIT COMPANY *F X 3 No. 1 (PA. F 2 No. 2)*

JOINT TARIFF

The rates named in this tariff are for the Transportation of Crude Petroleum Oil by pipe lines, and its storage, subject to the regulations named herein:

	PER BARREL OF 42 U.S. GALLONS
For Gathering and Transporting Oil from wells to delivery points on the SOUTH WEST PENNSYLVANIA PIPE LINES within the State ot Pennsylvania, -	Ⓐ 32 cents
Storage per day - - - - - - - - - - -	$\frac{3}{100}$ cents

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are, or shall be, published by this Company and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic and with the Public Service Commission of Pennsylvania, as to intrastate traffic providing for re-consignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amount to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Increased rates contained in this schedule are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 754, of June 26, 1918, without formal hearing, which approval shall not affect any subsequent proceedings relative thereto.

ISSUED JULY 1, 1918.

EFFECTIVE AUGUST 1, 1918.

	Month	Day	Year
Received			
Filed			

ISSUED BY
E. R. SHEPARD,
SECRETARY, SOUTH WEST PENNSYLVANIA PIPE LINES
OIL CITY, PA.

Ⓐ Advance

1457

REGULATIONS

*This Company will receive Crude Petroleum Oil for Storage or for Transportation to established delivery points on its own lines on the following conditions:

First: It will deduct for evaporation and waste two (2%) per cent. of the amount of oil run.

Second: The oil is to be steamed, or otherwise heated, and settled before running, whenever the representative of the pipe line company deems it necessary. When oil has been heated and is run at a temperature above normal, it will deduct one-twentieth (1-20th) of one (1%) per cent. for each degree, Fahrenheit, above normal temperature.

Third: All oil will be accepted for transportation only on condition that delivery may be made to consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with ~~other oil in the pipe~~ lines or tanks of this Company.

Fourth: It will charge storage for the month, at the close of each month, on all oil in Production Accounts, which was in its custody at the beginning of the month and still remains in such accounts.

Fifth: It will charge storage, beginning ten (10) days after oil has been transferred from Production Accounts, until tender of shipment is accepted; but if shipment be thereafter cancelled or changed, so that the period on which no storage is charged is extended, then storage will be charged as if the original tender had never been made.

Sixth: Whenever the total charge for storage on any batch of oil shall amount to less than five cents for any one month, no charge will be made for such storage in such month.

Seventh: Payment of accumulated charges may be demanded before accepting tender of shipment.

Eighth: Payment of transportation charges may be demanded in advance.

Ninth: When steam for pumping oil is furnished by a producer, he will be paid quarterly by check at the rate of one (1) cent per barrel of oil pumped.

*Change

cop 1458 Cl. Ex 19 Dec nov 1919

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 158

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

THE PURE OIL PIPE LINE COMPANY *F X 8 No. 1*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM	TO	RATE PER BARREL OF 42 U. S. GALLONS
CABIN CREEK STATION W. VA.	MARCUS HOOK, PA.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued September 1, 1918.

Effective October 1, 1918.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1459

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least fifty thousand (50,000) barrels, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of the participating carriers.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

Copy 1460 Rl. Ex. 20 ~~Canc~~ Nov 20/19 ✓

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 149

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTHERN PIPE LINE COMPANY *F X 3 No. 3*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM	TO	RATE PER BARREL OF 42 U. S. GALLONS
CABIN CREEK STATION W. VA.	PHILADELPHIA (Point Breeze Sta.). PA.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued October 18, 1917. **Effective October 20, 1917.**

Issued under authority of Rule 57, Tariff Circular 18 A. (Newly constructed line and applies from point of origin to point of destination from which no rates have applied.)

	Month	Day	Year
Received			
Filed			

ISSUED BY
E. R. SHEPARD,
SECRETARY, THE EUREKA PIPE LINE COMPANY
OIL CITY, PA.

1461

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies. on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of the participating carriers.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

Ex 190 Mc Ex. 21 Nov 20/19

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 156

Cancels I. C. C. No. 135

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTHERN PIPE LINE COMPANY *F X 3 No. 3*

NATIONAL TRANSIT COMPANY *F X 3 No. 2*

TUSCARORA OIL COMPANY, Limited *F X 3 No. 5*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM	TO	RATE PER BARREL OF 42 U. S. GALLONS
MORGANTOWN, W. VA.	BAYONNE, N. J. BAYWAY, N. J. CLAREMONT, N. J.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued August 10, 1918.

Effective September 10, 1918.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1463

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of The Eureka Pipe Line Company, Southern Pipe Line Company, and National Transit Company.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 154
Cancels I. C. C. No. 134

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTH WEST PENNSYLVANIA PIPE LINES *F X 3 No. 2*

SOUTHERN PIPE LINE COMPANY *F X 3 No. 3*

NATIONAL TRANSIT COMPANY *F X 3 No. 2*

TUSCARORA OIL COMPANY, Limited *F X 3 No. 5*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM		TO	RATE PER BARREL OF 42 U. S. GALLONS
BULA, W. VA. CORE, W. VA.	Via MORGANTOWN W. VA.	BAYONNE, N. J. BAYWAY, N. J. CLAREMONT, N. J.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued August 10, 1918.

Effective September 10, 1918.

	Month	Day	Year
Received			
Filed			

ISSUED BY
E. R. SHEPARD
SECRETARY, THE EUREKA PIPE LINE COMPANY
OIL CITY, PA.

1465

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Morgantown, West Virginia, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels at Morgantown, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of The Eureka Pipe Line Company, South West Pennsylvania Pipe Lines, Southern Pipe Line Company, and National Transit Company.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

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NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 138
Cancels I. C. C. No. 95

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTHERN PIPE LINE COMPANY *F X 3 No. 3*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM	TO	RATE PER BARREL OF 42 U. S. GALLONS
MORGANTOWN, W. VA.	PHILADELPHIA (Point Breeze Sta.), PA.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 31, 1916.

Effective March 1, 1916.

	Month	Day	Year
Received			
Filed			

ISSUED BY
E. R. SHEPARD
SECRETARY, THE EUREKA PIPE LINE COMPANY
OIL CITY, PA.

1467

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of the participating carriers.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

* **SEVENTH**—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

* CHANGE.

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NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 143

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTHERN PIPE LINE COMPANY F X 3 No. 3

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM	TO	RATE PER BARREL OF 42 U. S. GALLONS
MORGANTOWN, W. VA.	BRAMELL POINT (Paulsboro) N. J.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued October 1, 1916.

Effective November 1, 1916.

	Month	Day	Year
Received			
Filed			

ISSUED BY
E. R. SHEPARD
SECRETARY, THE EUREKA PIPE LINE COMPANY
OIL CITY, PA.

1469

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of the participating carriers.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed.. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

1470 Rl. Bk. 25

Nov 20/19

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 144

Cancels I. C. C. No. 122

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTH WEST PENNSYLVANIA PIPE LINES *F X 3 No. 2*

NATIONAL TRANSIT COMPANY *F X 3 No. 2*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM		TO	RATE PER BARREL OF 42 U. S. GALLONS
BULA, W. VA. DOWNS, W. VA. HOFFMAN, W. VA. JAKES RUN, W. VA. LITTLETON, W. VA.	VIA EWINGS, PA.	PITTSBURGH, PA.	12 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 15, 1917.

Effective February 15, 1917.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1471

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Ewings, Pennsylvania, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least one thousand (1,000) barrels at Ewings, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of the participating carriers.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

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NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 148

Cancels I. C. C. No. 123

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTH WEST PENNSYLVANIA PIPE LINES *F X 3 No. 2*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM		TO	RATE PER BARREL OF 42 U. S. GALLONS
BULA, W. VA. DOWNS, W. VA. HOFFMAN, W. VA. JAKES RUN, W.VA. LITTLETON, W.VA.	VIA EWINGS, PA.	ALLEGHENY, PA. CORAOPOLIS, PA. FREEDOM, PA. NEVILLE ISLAND, PA. OAK GROVE, PA.	12 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued April 15, 1917. **Effective April 18, 1917.**

Issued on three days' notice, under special permission of the Interstate Commerce Commission, No. 41506 of April 11, 1917.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1473

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Ewings, Pennsylvania, from any other point and consigned to the same destination, shall, in the aggregate, amount to at least one thousand (1,000) barrels at Ewings, then such aggregate amount shall be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of the participating carriers.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

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NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 145

Cancels I. C. C. No. 125

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTH WEST PENNSYLVANIA PIPE LINES *F X S No. 2*

NATIONAL TRANSIT COMPANY *F X S No. 2*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM			TO	RATE PER BARREL OF 42 U. S. GALLONS
BELL, W. VA. BRICE, W. VA. BUCHER, W. VA. BULA, W. VA. CARSON, W. VA. DOWNS, W. VA.	GIBSON, W. VA. HOFFMAN, W VA. JAKES RUN, W.VA. LITTLETON, W.VA. MURRAY, W. VA. SCOTT, W. VA.	VIA BEAR CREEK, PA.	FRANKLIN STATION, PA.	22 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 15, 1917.

Effective February 15. 1917.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1475

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies. on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Bear Creek, Pennsylvania. from any other points and consigned to the same destination, shall, in the aggregate, amount to at least twenty-five thousand (25,000) barrels at Bear Creek, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of the participating carriers.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

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NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 146

Cancels I. C. C. No. 126

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTH WEST PENNSYLVANIA PIPE LINES *F X 3 No. 2*

NATIONAL TRANSIT COMPANY *F X 3 No. 2*

NORTHERN PIPE LINE COMPANY *F X 3 No. 4*

NEW YORK TRANSIT COMPANY *F X 3 No. 11*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM			TO	RATE PER BARREL of 42 U. S. GALLONS
BELL, W. VA. BRICE, W. VA. BUCHER, W. VA. BULA, W. VA. CARSON, W. VA. DOWNS, W. VA.	GIBSON, W. VA. HOFFMAN, W VA. JAKES RUN, W.VA. LITTLETON, W.VA. MURRAY, W. VA. SCOTT, W. VA.	VIA BEAR CREEK, PA.	OLEAN, N. Y.	30 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 15, 1917.

Effective February 15, 1917.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1477

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Bear Creek, Pennsylvania, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least twenty-five thousand (25,000) barrels at Bear Creek, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of The Eureka Pipe Line Company, South West Pennsylvania Pipe Lines, and National Transit Company or of any other participating carrier if insured against loss by fire.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

Copy

Cancelled & Superseded by I. C. C. No. 156 Issued Effective Sept. 10 1918

I. C. C. Ex. 29 June 20/19

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

1478

I. C. C. No. 135

Cancels I. C. C. No. 109

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTHERN PIPE LINE COMPANY *F X 3 No. 3*

NATIONAL TRANSIT COMPANY *F X 3 No. 2*

TUSCARORA OIL COMPANY, Limited *F X 3 No. 5*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM	TO	RATE PER BARREL OF 42 U. S. GALLONS
MORGANTOWN, W. VA.	BAYONNE, N. J. BAYWAY, N. J.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 31, 1916.

Effective March 1, 1916.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1479

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of The Eureka Pipe Line Company, Southern Pipe Line Company, and National Transit Company.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

* CHANGE.

1480 Cancelled & Superseded by I. C. C. No. 154 Issued Effective Sept 10 1918 Pl. Bk. 30 Nov 20/19

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 134

Cancels I. C. C. No. 106

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTH WEST PENNSYLVANIA PIPE LINES *F X 3 No. 2*

SOUTHERN PIPE LINE COMPANY *F X 3 No. 3*

NATIONAL TRANSIT COMPANY *F X 3 No. 2*

TUSCARORA OIL COMPANY, Limited *F X 3 No. 5*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM		TO	RATE PER BARREL OF 42 U. S. GALLONS
BULA, W. VA. CORE, W. VA.	VIA MORGANTOWN, W. VA.	BAYONNE, N. J. BAYWAY, N. J.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 31, 1916.

Effective March 1, 1916.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1481

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, received at Morgantown, West Virginia, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels at Morgantown, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of The Eureka Pipe Line Company, South West Pennsylvania Pipe Lines, Southern Pipe Line Company, and National Transit Company.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

• SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

• CHANGE

nov 29/9

1482

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 142

Cancels I. C. C. No. 141

THE EUREKA PIPE LINE COMPANY

IN CONNECTION WITH

SOUTHERN PIPE LINE COMPANY *F X 3 No. 3*

NATIONAL TRANSIT COMPANY *F X 3 No. 2*

TUSCARORA OIL COMPANY, Limited *F X 3 No. 5*

JOINT TARIFF

The rate named in this Tariff is for the transportation, by pipe lines, of Crude Petroleum Oil exclusively, subject to the regulations named herein.

FROM	TO	RATE PER BARREL OF 42 U. S. GALLONS
MORGANTOWN, W. VA.	CENTERBRIDGE, PA.	33 CTS.

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company or any of the carriers parties to this tariff and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued June 6, 1916.

Effective July 6, 1916.

	Month	Day	Year
Received			
Filed			

ISSUED BY

E. R. SHEPARD

SECRETARY, THE EUREKA PIPE LINE COMPANY

OIL CITY, PA.

1483

REGULATIONS

This Company receives Crude Petroleum Oil for interstate transportation to established delivery stations on its own lines, and lines of connecting Pipe Line Companies, on the following conditions:

FIRST—The oil will be received for interstate transportation when the shipper or consignee has provided the necessary facilities for receiving the oil as it arrives at destination.

SECOND—When the oil shipped hereunder in conjunction with other oil of the same kind and quality, from any other points and consigned to the same destination, shall, in the aggregate, amount to at least seventy-five thousand (75,000) barrels, then such aggregate amount will be forwarded to destination.

THIRD—All oil will be accepted for transportation only on condition that deliveries may be made to connecting carriers and consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this or the connecting company or companies.

FOURTH—The shipper or consignee shall pay the transportation and all other lawful charges accruing on oil tendered for shipment and, if required, shall pay the same either in advance or before delivery. Oil accepted for transportation shall be subject to a lien for all such charges.

FIFTH—No carrier of any of the oil herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, quarantine, the authority of law, strikes, riots, or the act or default of the shipper or owner, or from any other cause not due to the negligence of these carriers; in such cases the shipper shall stand the loss in the same proportion as the amount of his tender bears to the whole amount of the consignment of which it is a part, and shall be entitled to receive only such portion of his tender as is left after deducting his due proportion of the loss, as above; but this exemption shall not apply to loss by fire (whether originating from lightning or any other cause), while the oil is in the custody of The Eureka Pipe Line Company, Southern Pipe Line Company and National Transit Company.

SIXTH—The amount of loss or damage, if any, for which the carrier shall be liable to the shipper shall be based upon the market value of the oil lost or damaged at the place and time of shipment plus the transportation charge, if any, prepaid from the place of shipment to the point of consignment.

SEVENTH—Except where property is damaged in transit by carelessness or negligence of the carrier, claims for loss or damage must be made in writing to the initial or delivering carrier within four (4) months after delivery of the property, or, in case of failure to make delivery, then within four (4) months after a reasonable time for delivery has elapsed. Suits for recovery of claims for loss or damage, notice of which is not required, and which are not made in writing to the carrier within four (4) months as above specified, shall be instituted only within two (2) years after the delivery of the property, or, in case of failure to make delivery, then within two (2) years after a reasonable time for delivery has elapsed. No claims not in suit will be paid after the lapse of two (2) years as above, unless made in writing to the carrier within four (4) months as above specified.

EIGHTH—A deduction of one per cent. (1%) will be made from the amount of each tender when the oil is received, to cover losses due to shrinkage and evaporation incident to the transportation of oil by pipe lines.

[Here follows Pl. Ex #32 - First Mah. Page 1484]

NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
IOWA
MINNESOTA
WISCONSIN
MICHIGAN
ILLINOIS
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISSOURI
ARKANSAS
MISSISSIPPI
ALABAMA
GEORGIA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
WEST VIRGINIA
PENNSYLVANIA
NEW YORK
VERMONT
NEW HAMPSHIRE
MASSACHUSETTS
CONNECTICUT
DELAWARE
MARYLAND
LAKE SUPERIOR
LAKE MICHIGAN
LAKE ERIE
LAKE ONTARIO
CANADA
OCEAN
Pipe Line Company

Piff's Ex 32

copy

pl. Ep 33 Dec nov 21/19 1485

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

I. C. C. No. 160
P. S. C. W. Va. No. 8

Cancels
I. C. C. No. 151
P. S. C. W. Va. No. 6

THE EUREKA PIPE LINE COMPANY

LOCAL TARIFF

The rates named in this tariff are for the transportation of Crude Petroleum Oil of a gravity exceeding thirty-five degrees Baume (at sixty degrees Fahrenheit) by pipe lines, and its storage, subject to the regulations named herein:

	PER BARREL OF 42 U.S. GALLONS
For Gathering and Transporting Oil from wells to delivery points within the State of West Virginia	Ⓐ 30 cents
Storage per day	$\frac{1}{40}$ cent

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are, or shall be, published by this Company and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic and with the Public Service Commission of West Virginia, as to intrastate traffic providing for re-consignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amount to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Increased rates contained in this schedule are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 1673 of August 9, 1919, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

ISSUED AUGUST 16, 1919

EFFECTIVE SEPTEMBER 20, 1919

	Month	Day	Year
Received			
Filed			

ISSUED BY
C. A. McLOUTH,
SECRETARY, THE EUREKA PIPE LINE CO.,
OIL CITY, PA.

Ⓐ Advance.

REGULATIONS

This Company will receive Crude Petroleum Oil of a gravity exceeding thirty-five degrees Baume (at sixty degrees Fahrenheit) for storage, or for transportation to established delivery points on its own lines on the following conditions:

First: It will deduct for evaporation and waste two (2%) per cent. of the amount of oil run.

Second: The oil is to be steamed, or otherwise heated, and settled before running, whenever the representative of the pipe line company deems it necessary. When oil has been heated and is run at a temperature above normal, it will deduct one-twentieth (1-20th) of one (1%) per cent. for each degree, Fahrenheit, above normal temperature.

Third: All oil will be accepted for transportation only on condition that delivery may be made to consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this Company.

Fourth: It will charge storage for the month, at the close of each month, on all oil in Production Accounts, which was in its custody at the beginning of the preceding month and still remains in such accounts.

Fifth: It will charge storage, beginning ten (10) days after oil has been transferred from Production Accounts, until tender of shipment is accepted; but if shipment be thereafter cancelled or changed, so that the period on which no storage is charged is extended, then storage will be charged as if the original tender had never been made.

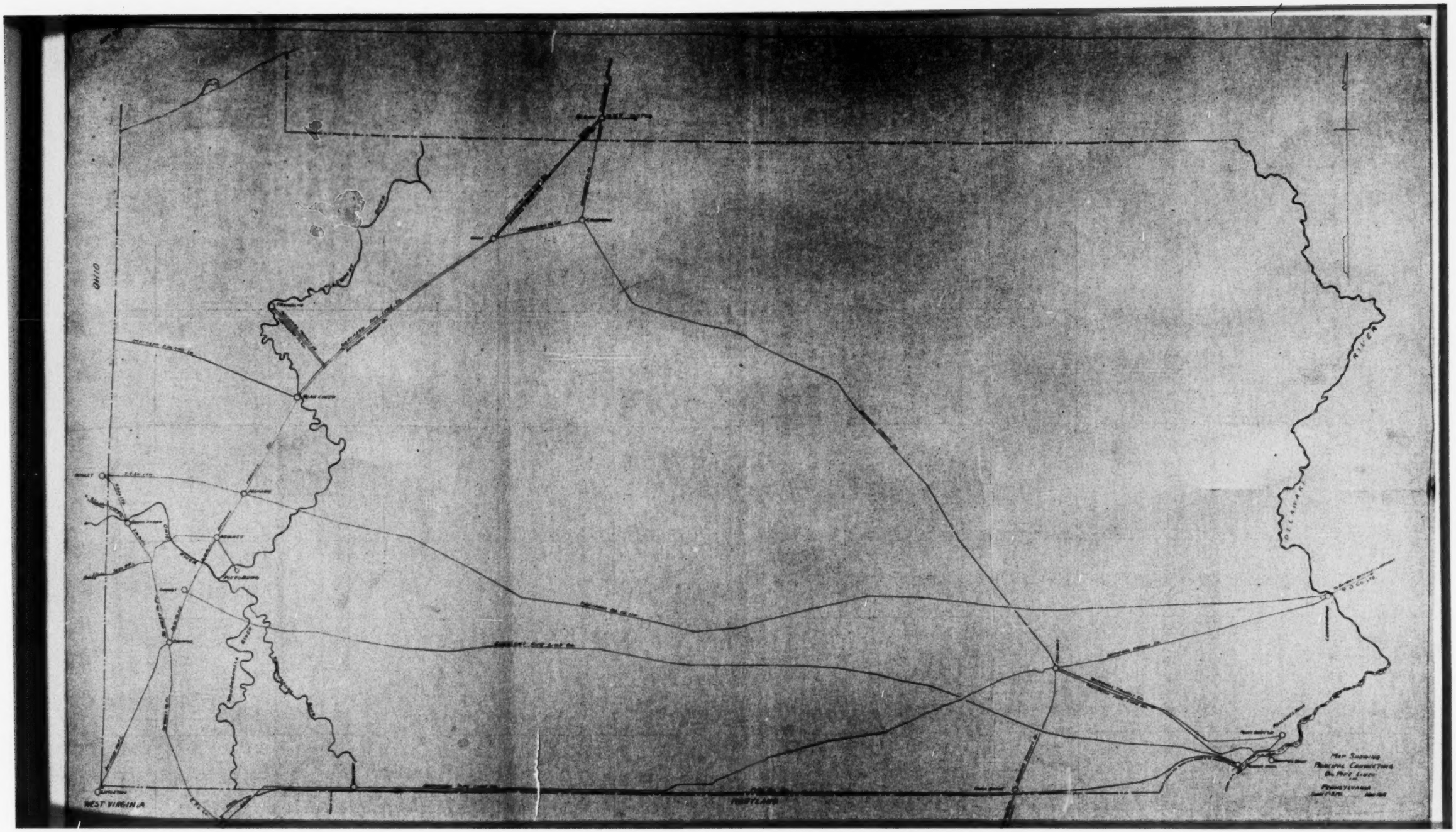
Sixth: Whenever the total charge for storage on any batch of oil shall amount to less than five cents for any one month, no charge will be made for such storage in such month.

Seventh: Payment of accumulated charges may be demanded before accepting tender of shipment.

Eighth: Payment of transportation charges may be demanded in advance.

Ninth: When steam or other power for pumping oil is furnished by a producer, he will be paid quarterly by check at the rate of one (1) cent per barrel of oil pumped.

[Here follows Pl. Ex 34 (4th Mak) Page 145]


OHIO
WEST VIRGINIA
PENNSYLVANIA
DELAWARE
MAP SHOWING
PRINCIPAL CONNECTIONS
ON PRR LINES
IN
PENNSYLVANIA

Pl. & 35 1488
Dec 2/19

NO SUPPLEMENT TO THIS TARIFF WILL BE ISSUED EXCEPT FOR THE PURPOSE OF CANCELLING THE TARIFF

(22)

I. C. C. No. 151
P. S. C. W. Va. No. 6

Cancels
I. C. C. No. 118
P. S. C. W. Va. No. 4

THE EUREKA PIPE LINE COMPANY

LOCAL TARIFF

The rates named in this tariff are for the Intrastate transportation of Crude Petroleum Oil of a gravity exceeding thirty-five degrees Baume (at sixty degrees Fahrenheit) by pipe lines, and its storage, subject to the regulations named herein:

	PER BARREL OF 42 U.S. GALLONS
For Gathering and Transporting Oil from wells to delivery points within the State of West Virginia	**20 cents**
Storage per day	**$\frac{1}{40}$th cent**

Shipments transported under this tariff are entitled to such privileges and subject to such charges as are, or shall be, published by this Company and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic and with the Public Service Commission of West Virginia, as to intrastate traffic providing for re-consignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amount to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

ISSUED OCTOBER 31, 1917

EFFECTIVE DECEMBER 1, 1917

	Month	Day	Year
Received			
Filed			

ISSUED BY
E. R. SHEPARD,
SECRETARY, THE EUREKA PIPE LINE CO.,
OIL CITY, PA.

1489

REGULATIONS

This Company will receive Crude Petroleum Oil of a gravity exceeding thirty-five degrees Baume (at sixty degrees Fahrenheit) for storage, or for Intrastate transportation to establish delivery points on its own lines on the following conditions:

First: It will deduct for evaporation and waste two (2%) per cent. of the amount of oil run.

Second: The oil is to be steamed, or otherwise heated, and settled before running, whenever the representative of the pipe line company deems it necessary. When oil has been heated and is run at a temperature above normal, it will deduct one-twentieth (1-20th) of one (1%) per cent. for each degree, Fahrenheit, above normal temperature.

*Third: All oil will be accepted for transportation only on condition that delivery may be made to consignees out of a common stock of oil of the same general kind and quality as that received from the shipper and that the oil shall be subject to such changes in gravity or quality, while in transit, as may result from the mixture of said oil with other oil in the pipe lines or tanks of this Company.

Fourth: It will charge storage for the month, at the close of each month, on all oil in Production Accounts, which was in its custody at the beginning of the preceding month and still remains in such accounts.

Fifth: It will charge storage, beginning ten (10) days after oil has been transferred from Production Accounts, until tender of shipment is accepted; but if shipment be thereafter cancelled or changed, so that the period on which no storage is charged is extended, then storage will be charged as if the original tender had never been made.

Sixth: Whenever the total charge for storage on any batch of oil shall amount to less than five cents for any one month, no charge will be made for such storage in such month.

Seventh: Payment of accumulated charges may be demanded before accepting tender of shipment.

Eighth: Payment of transportation charges may be demanded in advance.

Ninth: When steam or other power for pumping oil is furnished by a producer, he will be paid quarterly by check at the rate of one (1) cent per barrel of oil pumped.

* Addition.

PURCHASE ORDER FORM 805 029463 97467 Copy 1490

Charges $ ..... Pl. Ex. 36 Dec 2/19 ..... Office, ... 19 .....

THE EUREKA PIPE LINE COMPANY.

Transfer to credit of ~~SOUTH PENN OIL COMPANY~~

..... *Bbls. Penn'a Grade Oil,*

subject to your customary rules and regulations and charge to account of

P. O. Address

..... *Bbls.* ..... *Sign here* .....

.....

Cof J Pl. Ex. 37 Dec. 4/19 1491

SHIPPER'S ORDER FOR DELIVERY OF OIL BY PIPE

_____ 191

THE EUREKA PIPE LINE CO.
SHIPPING DEPARTMENT
OIL CITY, PA.

Please Deliver to _____

At _____ Bbls.

_____ OIL AND CHARGE TO ACCOUNT OF

_____

Order issued by THE EUREKA P.L.CO.

_____ 191_____

_____

1472

ORIGINAL

Shipper's No. _____ Pipe Line Order No. _____

_____ 19 TENDER OF SHIPMENT

THE EUREKA PIPE LINE COMPANY

_____

Shipment is hereby tendered at _____

To be delivered to _____ at _____

of _____ thousand barrels of 42 gallons each of _____ Crude Petroleum Oil

" " " _____ " "

subject to the rate and regulations in Tariff I. C. C. No. _____ which is filed with the Interstate Commerce Commission at Washington, D. C., and posted in the Receiving Stations of the Company.

Accepted:

THE EUREKA PIPE LINE COMPANY

_____ (Shipper's Name)

By _____

_____ Date _____ (Address)

This Tender of Shipment to be executed in duplicate, the duplicate to be retained by Shipper. When accepted, this Tender will be entered by the Pipe Line Co. on its books as an ORDER and will be executed in its turn.

NOT NEGOTIABLE

Copy

DUPLICATE

Shipper's No. _____ Pipe Line Order No. _____

_____ 19 TENDER OF SHIPMENT

THE EUREKA PIPE LINE COMPANY

_____

Shipment is hereby tendered at _____

To be delivered to _____ at _____

of _____ thousand barrels of 42 gallons each of _____ Crude Petroleum Oil

" " " _____ " "

subject to the rate and regulations in Tariff I. C. C. No. _____ which is filed with the Interstate Commerce Commission at Washington, D. C., and posted in the Receiving Stations of the Company.

Accepted:

THE EUREKA PIPE LINE COMPANY

_____ (Shipper's Name)

By _____

_____ Date _____ (Address)

This Tender of Shipment to be executed in duplicate, the duplicate to be retained by Shipper. When accepted, this Tender will be entered by the Pipe Line Co. on its books as an ORDER and will be executed in its turn.

NOT NEGOTIABLE

029150 99436

copy

THE EUREKA PIPE LINE CO.

1493

Pl Ex 38a
Dec 2/19

NOTICE OF TENDER OF SHIPMENT

BY ..... AT .....

FOR DELIVERY TO ..... AT .....

UNDER JOINT I. C. C. TARIFF NO ..... P. L. ORDER NO. ..... RATE .....

AMOUNT TENDERED ..... BARRELS ..... DATED .....

DELIVERED PRICE .....

	DIVISION OF RATE		DIVISION OF 1 PER CT.	

0941 RE Ex 39 Nov 17/19

RE Ex 39 1494

Shipper's No. 288 **ORIGINAL** Pipe Line Order No. 354

December 4, 1918 *TENDER OF SHIPMENT*

Cumberland Pipe Line Company
(INCORPORATED)

Shipment is hereby tendered at SUNDRY PTS. in KY. (Via Morgantown, W.VA.)
To be delivered to ATLANTIC REFINING COMPANY *at* PHILA., PA. (Pt. Breeze Sta.)
of Seventy-five *thousand barrels of 42 gallons each of* SOMERSET *Crude Petroleum Oil*
- - - - - - " " - - - - - " "
subject to the rate and regulations in Tariff I. C. C. No. 36 *which is filed with the Interstate Commerce Commission at Washington, D. C., and posted in the Receiving Station of the Company.*

Accepted:
CUMBERLAND PIPE LINE COMPANY
(INCORPORATED)
By Forrest M. Towl. GWW
December 4, 1918 *Date*

SOUTH PENN OIL CO.
(sgd) P.S.Trainor. Atty.
(Shipper's Name)
COUNTERSIGNED
(sgd) Thos.G.Burns.
(Address)
26 Broadway, N. Y. City.

This Tender of Shipment to be executed in duplicate, the duplicate to be retained by Shipper. When accepted, this Tender will be entered by the Pipe Line Co. on its books as an ORDER and will be executed in its turn.

NOT NEGOTIABLE

Shipper's No. 288 **DUPLICATE** Pipe Line Order No. 354

December 4, 1918 *TENDER OF SHIPMENT*

Cumberland Pipe Line Company
(INCORPORATED)

Shipment is hereby tendered at SUNDRY PTS. in KY. (Via Morgantown, W.VA.)
To be delivered to ATLANTIC REFINING COMPANY *at* PHILA., PA. (Pt. Breeze Sta.)
of Seventy-five *thousand barrels of 42 gallons each of* SOMERSET *Crude Petroleum Oil*
- - - - - - - - " " - - - - - " "
subject to the rate and regulations in Tariff I. C. C. No. 36 *which is filed with the Interstate Commerce Commission at Washington, D. C., and posted in the Receiving Station of the Company.*

Accepted:
CUMBERLAND PIPE LINE COMPANY
(INCORPORATED)
By Forrest M. Towl. GWW
December 4, 1918. *Date*

SOUTH PENN OIL CO.
(sgd) P.S.Trainor. Atty.
(Shipper's Name)
COUNTERSIGNED
(sgd) Thos.G.Burns.
(Address)
26 Broadway, N. Y. City

This Tender of Shipment to be executed in duplicate, the duplicate to be retained by Shipper. When accepted, this Tender will be entered by the Pipe Line Co. on its books as an ORDER and will be executed in its turn.

NOT NEGOTIABLE

029150 95436

pl & ag Nov 17/19 1495

CUMBERLAND PIPE LINE COMPANY INC

SAMPLE

NOTICE OF TENDER OF SHIPMENT

BY South Penn Oil Company AT Sundry Points in Kentucky

FOR DELIVERY TO Atlantic Refining Company AT Phila Pa (Pt Breese Sta)

UNDER JOINT I. C. C. TARIFF NO 36 P. L. ORDER NO 354 RATE 50¢

AMOUNT TENDERED 75,000.00 BARRELS Somerset Oil DATED December 4, 1918

DELIVERED PRICE $3.36

	DIVISION OF RATE		DIVISION OF ½ PER CT.	
Cumberland	12	73	114	70
Eureka	17	23	277	03
Southern	20	04	358	27
	50	00	750	00

CUMBERLAND PIPE LINE CO., INC.
FORREST M. TOWL, PRESIDENT

F Pl. Gr. 41 Dec. 2/19 1496

TENDER OF SHIPMENT NOTICE

Issued July 24th,1919.

By THE PRAIRIE OIL & GAS COMPANY

On THE PRAIRIE PIPE LINE COMPANY.

Tariff No.75

Shipping Order No. 1325

Amount 100,000 barrels Grade Mid-Continent

For delivery to STANDARD OIL CO.(N.J.), BAYONNE,N.J.

Price $3.47 per barrel, plus war tax on pipe line charges.

1497

copy pd 42 Dec 2/19

THE EUREKA PIPE LINE COMPANY

Credit Balances on Production Books of oil produced in West Va. and unconsigned, at close of each month during Year ending June 30, 1919.

	Total	Not Subject to so-called Storage Charge	Subject to so-called Storage Chg.	Amt.Chgd.
July 31,1918	322 601 59	223 576 49	99 025 10	$ 767 39
Aug. 31,1918	335 575 38	236 364 65	99 210 73	769 32
Sept.30,1918	289 155 51	204 358 87	84 796 64	636 12
Oct. 31,1918	285 990 01	214 114 88	71 875 13	557 21
Nov. 30,1918	251 902 06	197 608 44	54 293 62	407 19
Dec. 31,1918	246 159 12	193 698 21	52 460 91	406 70
Jan. 31,1919	259 323 64	206 330 56	52 993 08	408 30
Feb. 28,1919	252 623 58	203 160 12	49 463 46	346 43
Mar. 31,1919	236 335 99	189 495 57	46 840 42	363 08
Apr. 30,1919	252 930 31	207 567 62	45 362 69	340 39
May 31,1919	268 596 80	219 105 00	49 491 80	382 58
June 30,1919	260 342 81	207 753 26	52 589 55	394 49
			Total -	$5 779 20
Daily Average	271 794 73	208 594 47	63 200 26	

Credit Balances on General Oil Books of oil produced in West Va. and unconsigned, at close of each month during Year ending June 30, 1919.

	Total	Not Subject to so-called Storage Chg.	Subject to so-called Storage Chg.	Amt.Chgd.
July 31,1918	84 432 80	84 432 80	-	$ -
Aug. 31,1918	66 436 83	64 232 91	2 203 92	14 31
Sept.30,1918	60 024 53	58 078 65	1 945 88	29 27
Oct. 31,1918	64 918 02	60 504 41	4 413 61	28 82
Nov. 30,1918	51 021 39	44 518 59	6 502 80	41 99
Dec. 31,1918	83 731 12	81 231 12	2 500 00	60 59
Jan. 31,1919	64 985 79	64 985 79	-	4 08
Feb. 28,1919	82 433 48	82 433 48	-	-
Mar. 31,1919	74 929 21	74 929 21	-	19 79
Apr. 30,1919	84 018 75	84 018 75	-	47
May 31,1919	72 800 11	72 800 11	-	-
June 30,1919	97 096 87	74 184 89	22 911 98	25 47
			Total -	$ 224 79
Daily Average	73 902 41	70 529 22	3 373 18	
Grand Total	345 697 14	279 123 69	66 573 44	$6,003 99

Grand Total 345 697 14 279 123 69 66 573 44 $6,003 99

1498

Copy Ex Pl 43 Dec 21.19

STATEMENT SHOWING THE AMOUNT OF OIL MOVED OR PUMPED BY THE VARIOUS STATIONS OF THE EUREKA PIPE LINE COMPANY, NAMED IN THE I.C.C. TARIFFS WHICH WERE IN EFFECT FOR THE YEAR OR TWELVE MONTHS, BEGINNING WITH JULY 1, 1918 AND ENDING WITH JUNE 30, 1919.

STATIONS	AMOUNT PUMPED		
Morgantown	7,496.60	barrels	Cabell Oil
Morgantown	3,638,517.02	"	Penna Grade Oil
Cabin Creek	269,170.27	"	" " "
Downs	486,579.40	"	" " "
Brice	29,104.01	"	" " "
Bula	110,615.15	"	" " "
Hoffman	11,504.27	"	" " "
Core	10,461.26	"	" " "
Bucher	923.30	"	" " "
Gibson	1,185.31	"	" " "
Bell	1,041.98	"	" " "
Carson	6,425.03	"	" " "
Murray	7,780.45	"	" " "
Scott	128.62	"	" " "
Jakes Run	2,175.80	"	" " "
Littleton	54,780.21	"	" " "
Total	4,637,888.68		
Butler District Wayne County	1,459.51	"	Somerset Oil
Grand Total	4,639,348.19		

1499 Copy Pl. Ex. 44

Dec.5/19

SOMERSET OIL handled by THE EUREKA PIPE LINE COMPANY

	Received from Cumb'ld. P.L.Co.	Pumped by Morgantown
July 1918	321 123 03 bbls.	350 464 39
Aug 1918	333 062 77	244 072 47
Sept 1918	364 451 16	322 292 30
Oct 1918	378 509 09	365 479 31
Nov 1918	360 289 64	378 459 79
Dec 1918	450 079 92	486 082 19
Jan 1919	411 377 99	439 718 98
Feb 1919	390 282 00	344 638 04
Mch 1919	432 008 29	409 029 76
Apr 1919	430 499 22	416 771 35
May 1919	434 859 28	400 626 41
June 1919	519 710 44	497 509 33
T O T A L-	4,826 252 83	4 655 144 32
Monthly Avg.	402 187 74	387 928 69
Daily Average	13 222 61	12 753 82

NY 12/2-19
RHF

(*)Eureka's portion of the through rate on oil produced in West Virginia and delivered to other carriers for further transportation outside the State of West Virginia:			
For Claremont, N. J., Eureka, I. C. C. 156	1,398,267.72	.0287	40,130.71
Claremont, N. J., Eureka, I. C. C. 154	4,993.8[illegible]	.0458	228.74
Philadelphia, Pa., Eureka, I. C. C. 138	790,586.60	.0418	33,046.51
Bramell Point, N. J., Eureka, I. C. C. 143	397,980.00	.0418	16,635.56
Pittsburgh, Pa., Eureka, I. C. C. 144	174,756.03	.0462	8,073.73
Sundry Points, Pa., Eureka, I. C. C. 148	35,096.74	.0462	1,621.44
Franklin, Pa., Eureka, I. C. C. 145	273,654.11	.0418	11,438.75
Olean, N. Y., Eureka, I. C. C. 146	228,736.65	.0362	8,280.32
Bayonne, N. J., Eureka, I. C. C. 135	314,021.20	.0289	9,075.31
Bayonne, N. J., Eureka, I. C. C. 135	260,378.00	.0287	7,472.86
Bayonne, N. J., Eureka, I. C. C. 1[illegible]4	2,496.92	.0462	115.36
Bayonne, N. J., Eureka, I. C. C. 134	2,496.95	.0458	114.37
Bayonne, N. J., Eureka, I. C. C. 156	484,780.10	.0287	13,913.31
Centerbridge, Pa., Eureka, I. C. C. 142	4,279.63	.0069	29.53
	4,372,524.55		
The Eureka Pipe Line Co.'s portion of the 1% deductions on Eureka Tenders	4,461.86	.20	892.36
Total Gross Revenue from Transportation for twelve months ending June 30, 1919			2,669,692.43

(Here follow Plaintiff's Exhibits Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 (map), 33, 34 (map), 35, 36, 37, 38, 38a, 39, 40, 41, 42, 43, and 44, marked pages 1417 to 1499 inclusive).

206

1500 PLAINTIFF'S EXHIBIT 45.

Sheet 1.

The Eureka Pipe Line Company.

Analysis of Gathering Lines' Expenses for Year Ending June 30, 1919.

Maintenance Expense.

201	Superintendence	23,022.13
202	Repairs of Pipe Lines	103,246.17
203	Changing Line Construction	96,045.59
204	Repairs of Buildings	9,571.95
205	Repairs of Pumping Stations	55,188.79
206	Repairs of Oil Tanks	9,916.37
207	Repairs of Delivery Facilities	.....
208	Repairs of Telegraph and Telephone Lines	13,983.32
209	Repairs of Office Furniture and Equipment	45.92
210	Repairs of Highway Equipment	2,790.01
211	Repairs of Other Property	142.90
212	Other Expenses	.....
213	Depreciation	296,203.08
214	Retirements	14,124.68
	Total Maintenance Expenses	724,280.91

Transportation Expenses.

221	Superintendence	19,969.46
222	Operation of Gathering Lines	313,848.94
223	Operation of Pumping Stations	254,775.18
224	Operation of Oil Tanks	34,101.53
225	Operation of Delivery Facilities	.....
226	Operation of Telegraph and Telephone Lines	50,143.37
227	Oil Shortage	.....
228	Other Expenses	152.36
	Total Transportation Expenses	672,990.84

General Expenses.

231	General Office Salaries	31,327.74
232	General Office Supplies and Expenses	3,224.79
233	Law Expenses	8,510.22
234	Injuries to Persons	3,426.82
235	Damage to Property	5,960.76
236	Stationery and Printing	1,656.23
237	Insurance	6,821.61

238	Fire Losses	.....
239	Other Expenses	13,124.46
		74,052.63
	Total Expenses	1,471,324.38

1501 PLAINTIFF'S EXHIBIT 45.

Sheet 2.

The Eureka Pipe Line Company.

Analysis of Trunk Lines' Expenses for Year Ending June 30, 1919.

Maintenance Expense.

251	Superintendence	5,064.43
252	Repairs of Pipe Lines	2,069.67
253	Changing Line Construction	3,339.27
254	Repairs of Buildings	2,584.24
255	Repairs of Pumping Stations	19,167.32
256	Repairs of Oil Tanks	858.66
257	Repairs of Delivery Facilities	.....
258	Repairs of Telegraph & Telephone Lines	1,607.98
259	Repairs of Office Furniture & Equipment	6.72
260	Repairs of Highway Equipment	17.73
261	Repairs of Other Property	.....
262	Other Expenses	.....
263	Depreciation	50,223.60
264	Retirements	324.24
	Total Maintenance Expenses	85,263.86

Transportation Expenses.

271	Superintendence	4,571.61
272	Operation of Trunk Lines	9,146.39
273	Operation of Pumping Stations	75,434.06
274	Operation of Oil Tanks	25,327.34
275	Operation of Delivery Facilities	.....
276	Operation of Telegraph & Telephone Lines	11,029.28
277	Oil Shortage	4,096.35
278	Other Expenses	.....
	Total Transportation Expenses	129,605.03

General Expenses.

281	General Office Salaries	7,829.68
282	General Office Supplies and Expenses	820.40
283	Law Expenses	2,017.23

284	Injuries to Persons	.....
285	Damage to Property	1,195.42
286	Stationery and Printing	428.73
287	Insurance	9,210.76
288	Fire Losses	20.00
289	Other Expenses	4,049.56
	Total General Expenses	25,571.78
	Total Expenses	240,440.67
	Total Gathering Lines' Expenses	1,471,324.38
	Total Trunk Lines' Expenses	240,440.67
	Total Expenses for year ending June 30, 1919.	1,711,765.05

1502 PLAINTIFF'S EXHIBIT 45.

Sheet 3.

The Eureka Pipe Line Company.

Year Ending June 30, 1919.

Tariff Revenues		2,669,692.43
Expenses		1,711,765.05
Net Revenues		957,927.38
Taxes		347,734.79
Operating Income		610,192.59

Other Income.

Rents from Dwellings	188.21	
Rents from Telegraph Property	2,946.14	
Rents from Leased Lands	60.00	
Interest on Bonds	51,959.21	
Interest—National City Bank	3,382.84	
Gathering and Trunk Line Adjustments	29,466.90	
Inter-carriers Adjustments	5,433.61	
		93,060.49
		703,253.08

Profit & Loss Expense Account.

Losses:		
Amount paid in satisfaction and settlement of the claims of the Frenderberger Oil Co.	45,000.00	
Loss on Liberty Bonds sold ($200,000.00 @ $95.06)	9,880.00	
Donations to United War Work Campaign Fund	5,000.00	
Military Service Allowance	5,641.72	
Interest paid on Notes	738.89	
Overdraft & Allowance (a/c Errors made)	31.39	
Interest Paid	30.34	
		66,322.34
Profits:		
Profit on Sale of Pipe Line to Ohio Cities Gas Company	2,913.57	
Additional pipe used account changes in pipe lines at Rachel Gas Company Mine and paid for by them	879.37	
Profit on Liberty Bonds sold	14.20	
		3,807.14
Net Loss		62,515.20
Net Income		640,737.88

1503

Copy.

Pl. Ex. 53.

Jun. 7/20.

The Eureka Pipe Line Company.

The Eureka Pipe Line Company's Proportion of the 1% Deductions on Deliveries of Oil by Them on I. C. C. Tariffs in Barrels of Forty-two Gallons Each.

	From Jul. 1, 1918, to Jun. 30, 1919, inc.	From Jul. 1, 1919, to Nov. 30, 1919, inc.
Penna. Grade Oil	10,775.96	4,714.59
Cabell Oil	3.40	.....
Corning Oil	1,512.75	929.63
Somerset Oil	17,494.37	8,672.93
Mid-Continent Oil	1,393.30	528.47
Totals	31,179.78	14,845.62

Pl. Ex. 54.

Jan. 7/20.

The Eureka Pipe Line Company.

Oil Account, Penna. Grade Oil, for Twelve Months Ending June 30, 1919, in Barrels of Forty-two Gallons Each.

Stocks June 30, 1918		828,177.94
Receipts:		
From South West Penna. Pipe Lines	138,964.27	
The Buckeye Pipe Line Company	2,422,005.87	
United Fuel Gas Company	25,785.42	
Ohio Fuel Oil Company	13,572.86	
Ohio Cities Gas Company	230,004.95	
Net Runs from Wells	6,158,121.93	
Total Receipts		8,988,455.30
Deliveries:		
To Standard Oil Co., Parkersburg, W. Va.	802,164.22	
Ohio Valley Refg. Co., St. Marys, W. Va.	179,737.77	
Elk Refining Co., Falling Rock, W. Va.	257,148.19	
Pittsburgh & W. Va. Gas Co., Downs, W. Va.	32.61	
Carnegie Nat. Gas Co., Downs, W. Va.	11.90	
Hope Nat. Gas Co., Downs, W. Va.	4.86	
Southern Pipe Line Company	4,988,117.25	
South West Penna. Pipe Lines	1,989,553.20	

West Virginia Pipe Line Company	131,811.67		
Pure Oil Pipe Line Company	735,878.72		
Total Deliveries	9,084,460.39		
Fluid Loss for Year	*24,637.42		
		9,109,097.81	
Decrease in Stocks			120,642.51
Stocks June 30, 1919			707,535.43

* Analysis of Fluid Loss.

Gains:			
2% on Runs	125,675.94		
Expansion	244.04		
		125,919.98	
Losses:			
Wells to Stations	44,434.66		
On Pumpings	81,504.54		
Water Drawn	12,945.73		
Worthless thrown away	1,928.31		
Allowance to Ohio Valley Refg. Co.	125.00		
Accidents	9,619.16		
		150,557.40	
Net Fluid Loss for year ending June 30, 1919			24,637.42

Over and Short Account, Penna. Grade Oil, for Twelve Months Ending June 30, 1919.

Balance in over and short account June 30, 1918	58,753.75

Credit Balance Bought			21,992.64
Eureka's proportion of the 1% Deductions on I. C. C. Tariffs			10,775.96
			91,522.35
Less:			
Fluid Loss for year	24,637.42		
Increase in worthless matter as shown by annual inspection	16,418.41		
			41,055.83
Balance in over and short account June 30, 1919			50,466.52

1505 PL. Ex. 56.

Jan. 7/20.

The Eureka Pipe Line Company.

Oil Account, Cabell Oil, for Twelve Months Ending June 30, 1919, in Barrels of Forty-two Gallons Each.

Stocks June 30, 1918			10,671.88
Receipts:			
From Net Runs from Wells		6,574.51	
Deliveries:			
To Southern Pipe Line Company	7,496.60		
Fluid Loss for year	* 3,307.81		
		10,804.41	
Decrease in Stocks			4,229.90
Stocks June 30, 1919			6,441.98

* Analysis of Fluid Loss.

Gains:			
2% on Runs		134.16	
Losses:			
Wells to Stations	384.53		
Shrinkage	3,057.44		
		3,441.97	
Net Fluid Loss for year ending June 30, 1919			3,307.81

Over and Short Account, Cabell Oil, for Twelve Months Ending June 30, 1919.

Balance in Over and Short Account June 30, 1918	4,341.25
Eureka's proportion of the 1% deductions on I. C. C. Tariffs	3.40
Decrease in worthless matter as shown by annual Inspection	2,431.49
	6,776.14
Less:	
Fluid Loss for Year	3,307.81
Balance in Over and Short Account June 30, 1919	3,468.33

The Eureka Pipe Line Company.

Statement of Penna. Grade Oil Showing Liabilities, Surplus, Sediment, and Water and Gross Stocks at Close of Each Month From June 30, 1918, to November 30, 1919, Inc.

In Barrels of Forty-two Gallons Each.

	Liabilities.					
	Producers' balances.	General balances.	Total liabilities.	Surplus.	Sediment and water.	Gross stocks.
June 30, 1918	319,163.19	369,608.83	688,772.02	58,753.75	80,652.17	828,177.94
July 31, 1918	321,217.90	339,395.56	660,613.46	59,536.06	80,652.17	800,801.69
August 31, 1918	333,532.14	271,824.08	605,356.22	53,575.68	80,652.17	739,584.07
September 30, 1918	287,813.31	276,296.54	564,109.85	29,415.16	97,070.58	690,595.59
October 31, 1918	284,473.93	346,529.91	631,003.84	24,330.35	97,070.58	752,404.77
November 30, 1918	251,337.53	392,482.32	643,819.85	14,294.13	97,070.58	755,184.56
December 31, 1918	245,290.26	408,090.18	653,380.44	14,055.30	97,070.58	764,506.32
January 31, 1919	258,865.74	414,959.28	673,825.02	11,606.10	97,070.58	782,501.70
February 28, 1919	252,327.26	414,510.04	666,837.30	13,143.11	97,070.58	777,050.99
March 31, 1919	236,206.25	426,445.38	662,651.63	21,658.47	97,070.58	781,380.68
April 30, 1919	252,541.85	334,279.21	586,821.06	34,625.81	97,070.58	718,517.45
May 31, 1919	268,459.69	363,805.25	632,264.94	45,333.28	97,070.58	774,668.80
June 30, 1919	259,869.61	300,128.72	559,998.33	50,466.52	97,070.58	707,535.43
July 31, 1919	344,241.02	277,161.95	621,402.97	55,619.41	97,070.58	774,092.96
August 31, 1919	349,372.67	259,071.12	608,443.79	36,007.96	97,070.58	741,522.33
September 30, 1919	382,995.93	219,838.07	602,834.00	19,791.81	98,187.81	720,813.62

October 31, 1919.....	428,517.34	225,862.54	654,379.88	19,675.35	98,187.81	772,243.04
November 30, 1919.....	437,681.03	241,575.81	679,256.84	13,167.47	98,187.81	790,612.12

Copy.

Pl. Ex. 62.

Jan. 7/20.

The Eureka Pipe Line Company.

Statement of Cabell Oil Showing Liabilities, Surplus, Sediment, and Water and Gross Stocks at Close of Each Month from June 30, 1918, to November 30, 1919, Inc.

In Barrels of Forty-two Gallons Each.

	Liabilities.					
	Producers' balances.	General balances.	Total liabilities.	Surplus or deficit.*	Sediment and water.	Gross stocks.
June 30, 1918.....	839.66	897.12	1,736.78	4,341.25	4,593.85	10,671.88
July 31, 1918.....	1,297.15	1,534.28	2,831.43	4,320.04	4,593.85	11,745.32
August 31, 1918.....	1,964.90	1,835.01	3,799.91	4,317.83	4,593.85	12,711.59
September 30, 1918.....	1,253.24	2,886.81	4,140.05	6,701.66	2,162.36	13,004.07
October 31, 1918.....	1,429.71	1,390.88	2,820.59	6,601.11	2,162.36	11,584.06
November 30, 1918.....	478.16	2,804.60	3,282.76	6,583.76	2,162.36	12,028.88
December 31, 1918.....	782.49	3,137.21	3,919.70	6,539.91	2,162.36	12,621.97
January 31, 1919.....	371.53	4,020.23	4,391.76	6,662.65	2,162.36	13,216.77
February 28, 1919.....	278.80	4,452.55	4,731.35	6,615.22	2,162.36	13,508.93
March 31, 1919.....	129.74	4,998.24	5,127.98	7,106.87	2,162.36	14,397.21

PL. EX. 62—Continued.

	Liabilities.					
	Producers' balances.	General balances.	Total liabilities.	Surplus or deficit.*	Sediment and water.	Gross stocks.
April 30, 1919.....	379.33	5,104.45	5,483.78	6,071.97	2,162.36	13,718.11
May 31, 1919.....	137.11	5,724.65	5,861.76	4,484.27	2,162.36	12,508.39
June 30, 1919.....	473.20	338.09	811.29	3,468.33	2,162.36	6,441.98
July 31, 1919.....	741.43	812.83	1,554.26	2,461.52	2,162.36	6,178.14
August 31, 1919.....	152.55	1,776.39	1,928.94	1,462.36	2,162.36	5,553.66
September 30, 1919.....	509.66	1,883.44	2,393.10	879.20*	4,483.02	5,996.92
October 31, 1919.....	286.91	2,422.22	2,709.13	878.49*	4,483.02	6,313.63
November 30, 1919.....	499.73	2,675.86	3,175.59	937.39*	4,483.02	6,721.22

*In red.

Consignor.	Consignee.	Destination.	The Eureka Pipe Line Co., I. C. C. Tariff No.	Barrels.	Kind of oil.
South Penn Oil Co.	Standard Oil Co. N. J.	Bayonne, N. J.	135	417,383.83	Penna. Grade.
The Carter Oil Co.	" " " "	" "	135	89,439.06	" "
Hope Natl. Gas Co.	" " " "	" "	135	67,576.31	" "
South Penn Oil Co.	" " " "	" "	156	337,696.36	" "
The Carter Oil Co.	" " " "	" "	156	83,479.97	" "
Hope Natl. Gas Co.	" " " "	" "	156	63,603.77	" "
South Penn Oil Co.	" " " "	Claremont, N. J.	156	999,268.63	" "
The Carter Oil Co.	" " " "	" "	156	228,853.41	" "
Hope Natl. Gas Co.	" " " "	" "	156	170,145.68	" "
South Penn Oil Co.	" " " "	Bayonne, N. J.	134	5,467.36	" "
" " " "	" " " "	Claremont, N. J.	154	4,993.90	" "
" " " "	Atlantic Refg. Co.	Philadelphia, Pa.	138	783,090.00	" "
" " " "	" " " "	" "	138	7,496.60	Cabell.
" " " "	Vacuum Oil Co.	Bramell Point, N. J.	143	397,980.00	Penna. Grade.
" " " "	Atlantic Refg. Co.	Pittsburgh, Pa.	144	174,756.03	" "
Pittsburgh Oil Refg. Co.	Pittsburgh Oil Refg. Co.	Coraopolis, Pa.	148	34,897.41	" "
The Island Petm. Co.	The Island Petm. Co.	Neville, Island, Pa.	148	199.32	" "
South Penn Oil Co.	Atlantic Refg. Co.	Franklin, Pa.	145	273,654.11	" "
" " " "	Vacuum Oil Co.	Olean, N. Y.	146	228,736.65	" "
Atlantic Refg. Co.	Atlantic Refg. Co.	Philadelphia, Pa.	149	40,070.67	" "
The Ohio Cities Gas Co.	The Ohio Cities Gas Co.	Marcus Hook, Pa.	158	229,099.60	" "
Total				4,637,888.68	

1509

Copy.

Pl. Ex. 67.

Jan. 8/20.

The Eureka Pipe Line Company.

Gravity Lines.

Statement Showing Miles of Various Sizes of Pipe, Amount They Would Hold if Filled With Oil.

Diameter of pipe.	No. of miles.	Total capacity if filled with oil.
2 inch	2,177.00	47,706.00
3 inch	523	25,233
4 inch	262	21,782
5 inch	14	1,827
6 inch	159	29,999
8 inch	24	7,878
Total		134,425

1510

Pl. Ex. 68.

Jan. 8/20.

Statement Showing Total Iron Tankage Used by The Eureka Pipe Line Company for the Various Oils at the Different Points in West Virginia for the Period Commencing July 1, 1918, and Ending June 30, 1919.

Iron Tankage at Morgantown used for the various Oils as follows:

Somerset-Cabell Oil	284,501.05	barrels
#Mid-Continent Oil	235,327.49	"
##Corning Oil	170,124.08	"
Pennsylvania Grade Oil	893,850.00	"
Total	1,583,803.31	barrels

Iron Tankage at other points used for various oil as follows:

*Somerset-Cabell Oil	254,919.14	barrels
Corning Oil	115,499.33	"
Pennsylvania Grade Oil	714,122.75	"
Total	1,084,541.22	barrels
Total	2,668,344.53	barrels

#Tanks 107, 108 and 150 were used in handling Corning Oil until November 12, 1918, when they were cleaned out. Now used in handling Mid-Continent Oil—capacity 51,774.42 bbls.

##Tanks 198 and 199 at Morgantown were used for Mid-Continent Oil up to December 1, 1918. Then cleaned out and put in use handling Corning Oil—capacity 70,000.00 bbls.

*Tank 213 at Elm Run was used in handling Penna. Grade Oil up to April 13, 1919, when it was cleaned and later used in handling Somerset Oil—capacity 31,228.40 bbls.

1511 PL. EX. 78.

Jan. 8/20.

State of West Virginia,

The Board of Public Works,

Charleston.

Houston G. Young, Secretary.

(Copy of Assessment as Certified to the Auditor.)

I, Houston G. Young, Secretary of State and ex-officio Secretary of the Board of Public Works, in compliance with the requirements of Section 93, Chapter 29, of the Code of West Virginia, do hereby certify that the Board of Public Works has assessed for taxation the property of Eureka Pipe Line Company, for the year 1919, at $14,000,000.00, and apportioned the same to the counties in which said property is located, as follows:

Braxton County:		
Rosedale Borough	$4,484.00	
Salt Lick District	194.00	
		$4,678.00
Brooke County:		
Buffalo District	32,333.00	
Cross Creek District	37,476.00	
		69,809.00
Cabell County:		
Grant District		12,038.00
Calhoun County:		
Center District	33.243.00	
Lee District	40.215.00	
Sheridan District	87,199.00	
Sherman District	17,973.00	
Washington District	7,470.00	
		186,100.00

Clay County:		
Union District		14,539.00
Doddridge County:		
Central District	48,824.00	
Cove District	19,450.00	
Grant District	67,839.00	
Greenbrier District	93,856.00	
McClelland District	152,053.00	
New Milton District	59,035.00	
South West District	46,824.00	
West Union District	73,547.00	
		561,428.00
Gilmer County:		
Center District	33,070.00	
Rosedale Borough (Center District)	970.00	
De Kalb District	3,875.00	
Glenville District	102,139.00	
Town of Layopolis	70,254.00	
Troy District	21,798.00	
		232,106.00
Hancock County:		
Butler District	91,048.00	
Clay District	22,012.00	
Grant District	19,486.00	
Poe District	20,969.00	
		153,515.00
Harrison County:		
Ten Mile District	405,608.00	
Town of Salem	19,364.00	
Clay District	99,340.00	
Clark District	245.00	
Coal District	9,350.00	
1512 Eagle District	$78,384.00	
Grant District	1,545.00	
Sardis District	236,277.00	
Simpson District	2,141.00	
Union District	136,158.00	
		$988,412.00
Jackson County:		
Ravenswood District	3,152.00	
Grant District	193.00	
Ripley District	45,890.00	
Washington District	93,963.00	
		143,198.00

Kanawha County:		
Big Sandy District	78,507.00	
Cabin Creek District	33,922.00	
Elk District	323,401.00	
Jefferson District	1,257.00	
Malden District	46,955.00	
Poca District	155,842.00	
Union District	284.00	
		640,168.00
Lewis County:		
Court House District	60,762.00	
Town of Weston	284.00	
Freemans Creek District	243,291.00	
Hackers Creek District	378.00	
		304,715.00
Lincoln County:		
Carroll District	226,574.00	
Duval District	114,232.00	
Laurel Hill District	19,477.00	
Sheridan District	52,144.00	
Union District	10,771.00	
Washington District	3,224.00	
		426,422.00
Marion County:		
Paw Paw District	192,345.00	
Fairview Borough	5,601.00	
Fairmont District	624.00	
Grant District	15,120.00	
Lincoln District	412,174.00	
Mannington District	562,121.00	
Mannington City	26,192.00	
		1,214,177.00
Marshall County:		
Cameron District	12,083.00	
Clay District	511.00	
Franklin District	477.00	
Liberty District	53,249.00	
Meade District	99,109.00	
Union District	459.00	
Washington District	13,885.00	
Webster District	5,022.00	
		184,795.00
1513 **Mason County:**		
Hartford City		$307.00

Monongalia County:		
Morgantown City	$644,547.00	
Morgan District	408,357.00	
Union District	291,869.00	
Battelle District	163,368.00	
Cass District	84,857.00	
Clay District	364,093.00	
Grant District	356,560.00	
		2,313,651.00
Ohio County:		
Richland District	7,789.00	
Liberty District	318.00	
Ritchie County	303.00	
Triadelphia District	711.00	
		9,121.00
Pleasants County:		
Grant District	268,260.00	
Jefferson County	38,125.00	
Lafayette District	76,666.00	
McKim District	92,503.00	
Union District	98,981.00	
Washington District	148,889.00	
St. Marys Town	11,549.00	
		734,973.00
Putnam County:		
Curry District	116,357.00	
Pocatalico District	59,224.00	
Scott District	67,603.00	
		243,184.00
Ritchie County:		
Clay District	283,616.00	
Grant District	688,379.00	
Cairo Sub-School District	68,455.00	
Murphy District	264,294.00	
Union District	104,526.00	
		1,409,270.00
Roane County:		
Curtis District	13,153.00	
Geary District	6,963.00	
Harper District	363,131.00	
Reedy District	16,816.00	
Smithfield District	140,427.00	
Spencer District	244,454.00	
Town of Spencer	5,498.00	
Walton District	100,809.00	
		891,251.00

Tyler County:		
McElroy District	629,448.00	
Union District	94,532.00	
Centerville District	151,418.00	
Meade District	159,774.00	
Ellsworth District	160,389.00	
Lincoln District	113,010.00	
1514 Independent School District (Lincoln District)	$19,645.00	
City of Sistersville	70,403.00	
		$1,398,619.00
Wayne County:		
Butler District	1,861.00	
Grant District	24,726.00	
Lincoln District	95,558.00	
Stonewall District	22,538.00	
		144,683.00
Wetzel County:		
Center District	101,728.00	
Church District	50,317.00	
Clay District	109,184.00	
Grant District	423,158.00	
Town of Pine Grove	5,956.00	
Town of Smithfield	8,994.00	
Greene District	133,023.00	
Magnolia District	55,946.00	
Proctor District	71,597.00	
		959,903.00
Wirt County:		
Burning Springs District	165,934.00	
Clay District	36,113.00	
Spring Creek District	91,085.00	
Elizabeth District	26,774.00	
Newark District	102.00	
		320,008.00
Wood County:		
Clay District	85,385.00	
Harris District	3,340.00	
Parkersburg District	17,628.00	
Parkersburg City	2,899.00	
Slate District	265.00	
Walker District	56,902.00	
Union District	111,877.00	
Williams District	141,949.00	
Town of Williamstown	17,986.00	
Tygart District	151.00	
Volcano District	548.00	
		438,930.00
		$14,000,000.00

Given under my hand this 10th day of July, 1919.
(Signed) HOUSTON G. YOUNG,
Secretary Board of Public Works.

(Here follow Plaintiff's Exhibits Nos. 80, 81, 82, 83, and Defendants' Exhibits Nos. *a*, *b*, *c* and Exhibits Hardy No. 1 to No. 22, marked pages 1515 to 1543, incl.)

1515

Pk

Pl for Jan. 9/20

THE EUREKA PIPE LINE COMPANY

DIVISION OF TRANSPORTATION REVENUE

Receipts From		Gathering	Trunk
EUREKA TARIFFS	(From or passing thru Morgantown)		100%
ALL OTHER EUREKA TARIFFS		100%	
BUCKEYE TARIFFS	Southern Ohio Points	75%	25%
BUCKEYE TARIFFS	Northern Ohio Points	50%	50%
CUMBERLAND TARIFFS		75%	25%
ALL SOUTH WEST PA.PIPE LINES TARIFFS		50%	50%
ALL OTHER TARIFFS, via Morgantown (Western Oil)			100%

All western oil tariff receipts moving via Morgantown to be considered entirely Trunk Line Revenue, except $.003 per barrel which the gathering lines are to receive for use of tankage plant at Morgantown.

Pl. Ex. 87 June 9/20

1516

THE EUREKA PIPE LINE COMPANY

Statement showing deliveries of crude oil made by The Eureka Pipe Line Co.
For twelve months ending June 30, 1919

	Amount			Gathering			Trunk		
Oil produced in West Virginia and delivered to points in West Virginia for use in West Virginia									
Standard Oil Co.-Parkersburg,W.Va.	160	432	85						
Ohio Valley Refining Co.-St.Marys,W.Va.	35	947	56						
Elk Refining Co.-Falling Rock,W.Va.	51	429	64						
Pittsbg.& West Virginia Gas Co.-Downs,W.Va.		6	52						
Hope Natural Gas Co.-Downs,W.Va.			97						
Carnegie Natural Gas Co.-Downs,W.Va.		2	38						
				247	819	92			
Oil produced in West Virginia and delivered to other carriers in West Virginia for interstate transportation									
Pure Oil Pipe Line Co.-Morgantown,W.Va.	101	355	82						
West Virginia Pipe Line Co.-Littleton,W.Va.	26	362	40						
				127	718	22			
Oil produced in West Virginia and delivered at Penna.State Line to other carriers for further transportation outside the State of West Virginia									
to-South West Pennsylvania Pipe Lines	144	540	94						
to-Southern Pipe Line Company	729	202	72						
(FOR ADDITIONAL RATES SEE *)									
(FOR TARIFFS SEE *)				873	743	66			
Oil produced outside West Virginia and delivered to other carriers on I.C.C. tariffs									
Buckeye I C C 212	45	844	17	34	383	13	11	461	04
Buckeye I C C 209	52	492	79	39	369	59	13	123	20
Prairie I C C 33	86	132	25	11	186	00	74	946	25
Prairie I C C 30	24	527	63	3	571	99	20	955	64
Prairie I C C 66	11	460	75	1	488	41	9	972	34
Prairie I C C 58	2	468	18		372	09	2	096	09
So.West I C C 76		611	28		305	64		305	64
Buckeye I C C 212	37	459	93	28	094	95	9	364	98
Prairie I C C 17	43	844	05	5	951	68	37	892	37
Prairie I C C 48	5	679	73		567	97	5	111	76
Buckeye I C C 212	9	161	61	6	871	21	2	290	40
Buckeye I C C 209	5	576	62	4	182	46	1	394	16
Prairie I C C 43	7	558	47		892	73	6	665	74
Cumberland I C C 36	808	231	75	606	173	81	202	057	94
Buckeye I C C 212	18	448	89	13	836	67	4	612	22
Buckeye I C C 212		479	02		239	51		239	51
Buckeye I C C 209	2	583	65	1	937	74		645	91
Buckeye I C C 212	4	485	95	2	242	97	2	242	98
Buckeye I C C 212	41	603	35	31	202	51	10	400	84
Buckeye I C C 209	2	449	60	1	224	80	1	224	80
Buckeye I C C 209	16	698	39	12	523	79	4	174	60
Buckeye I C C 209	1	327	77		995	83		331	94
So.West I C C 75		330	87		165	43		165	44
So.West I C C 85	2	783	53	1	391	77	1	391	76
So.West I C C 85		809	54		404	77		404	77
	1 233 049 77			809	577	45	423	472	32
Oil produced in West Virginia (but not run by The Eureka Pipe Line Co.) and delivered to other carriers on I.C.C.Tariffs									
Eureka I C C 158	30	561	89						
Eureka I C C 149	5	730	11						
							36	292	00
Amount Forward	2	518	623	57					

Opt Pl. Ex 82 Jan. 4/20

1517

THE EUREKA PIPE LINE COMPANY

Analysis of Expenses of Lines from

HAMLIN to BRADEN and EUREKA to MORGANTOWN

From July 1, 1918 to June 30, 1919

		FOR		SINCE					
	MAINTENANCE EXPENSES								
201	Superintendence	2	04500						
202	Repairs of Pipe Lines	5	97205						
203	Changing Line Construction		22491						
204	Repairs of Buildings	2	06540						
205	Repairs of Pumping Stations	17	01021						
206	Repairs of Oil Tanks	5	92420						
207	Repairs of Delivery Facilities		---						
208	Repairs of Telegraph and Telephone Lines	3	54781						
209	Repairs of Office Furniture and Equipment		---						
210	Repairs of Highway Equipment		1480						
211	Repairs of Other Property		4893						
212	Other Expenses		---						
213	Depreciation	91	43253						
214	Retirements (Wooden Tanks)		74250						
	Total Maintenance Expenses	129	02834						
	TRANSPORTATION EXPENSES								
221	Superintendence	2	36400						
222	Operation of Gathering Lines	9	65600						
223	Operation of Pumping Stations	105	22503						
224	Operation of Oil Tanks	24	57162						
225	Operation of Delivery Facilities		---						
226	Operation of Telegraph and Telephone Lines	12	61030						
227	Oil Shortage		---						
228	Other Expenses		---						
	Total Transportation Expenses	154	42695						
	GENERAL EXPENSES								
231	General Office Salaries	7	83193						
232	General Office Supplies and Expenses		80320						
233	Law Expenses	2	12830						
234	Injuries to Persons		86670						
235	Damage to Property (Net)		49100						
236	Stationery and Printing		41406						
237	Insurance (Proportion)	1	80000						
238	Fire Losses		---						
239	Other Expenses		---						
	Total General Expenses	14	33519						
	TOTAL EXPENSES	297	79048						

1518

Pl. Ex. 83
Jan 10/20

THE EUREKA PIPE LINE COMPANY

- - - O - - -

	Gathering Lines	Trunk Lines
Expenses as on Exhibit #45	$1,471,324.38	$ 240,440.67
Expenses-Hamlin to Braden and Eureka to Morgantown	297,790.48	297,790.48
	$1,173,533.90	$ 538,231.15
Per cent. total expense	68.6	31.4

- - - O - - -

Revenues as on Exhibit #4	$2,058,859.25	610,833.18
Receipts acct. Hamlin to Braden and Eureka to Morgantown considered as trunk line	785,546.58	785,546.58
	$1,273,312.67	$1,396,379.76
Per cent. of revenue from transportation	47.7	52.3

- - - O - - -

PURCHASE ORDER FORM 805 029463 97467 1519 Copy a. Dft. Ex. Purchase Order

Charges $ ..... Charleston, W Va. Office, June 7/20 19

THE EUREKA PIPE LINE COMPANY.

Transfer to credit of SOUTH PENN OIL COMPANY

.... Bbls. Penn'a Grade Oil,

subject to your customary rules and regulations and charge to account of

P. O. Address

..... Bbls. ..... Sign here .....

.....

1520 6) Copy of Division Order Jan 7/91

FORM 803 029235 9606)

To THE EUREKA PIPE LINE COMPANY

The undersigned certify and guarantee that they are the legal owners of ____ *Wells Nos. 1 and up, on* ____ *Farm,* ____ *District,* ____ *County, State of West Virginia, including the royalty interest, and until further notice you will credit all oil as per directions below:*

CREDIT TO	Division of Interest	POST OFFICE ADDRESS

Pipe Line Tank Nos. ____

The Eureka Pipe Line Company is hereby authorized, until further notice, to receive oil from said wells for transportation for said parties severally in the proportions named, subject to the following conditions:

FIRST—Payment of a transportation charge of 30 cents per barrel;—all oil received from said wells shall be delivered at delivery station on its lines.

SECOND—The Eureka Pipe Line Company shall charge storage for the month, at the close of each month, on all oil so received, which was in its custody at the beginning of the preceding month, and still remains undelivered, at the rate of one-fortieth of a cent per barrel per day.

THIRD—The Eureka Pipe Line Company shall deduct two per cent. from all oil received from wells into its custody on account of evaporation and waste, and in addition shall deduct one-twentieth of one per cent. for each degree Fahrenheit above normal temperature to which said oil shall have been subjected, and oil shall be steamed or otherwise heated and settled before running whenever the representative of The Eureka Pipe Line Company deems it necessary.

FOURTH—The Eureka Pipe Line Company shall not in any event be liable for loss of petroleum resulting from lightning, fire, storms or other unavoidable causes, and such loss shall be charged pro rata upon all petroleum in its custody at the time of such loss, and transportation and all accrued storage charges shall be paid on the amount so deducted.

We agree in case of any adverse claim of title to furnish THE EUREKA PIPE LINE COMPANY satisfactory evidence of title, or failing to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said THE EUREKA PIPE LINE COMPANY may retain the oil until we do so, or until the dispute as to ownership is settled.

Witness:

NOTE—The above blank should be so filled as to show distinctly whether the wells specified are owned by an individual, by tenants in common, by a co-partnership or by a corporation; and should be signed by all owners, including the owners of royalty or their duly authorized representatives.

FORM 804 029235 96066

1541

4) Del. & Transfer Orders
C. Jan 7/20 191

To THE EUREKA PIPE LINE COMPANY.

_____ *have this day sold* _____

Wells Nos. 1 and up on _____ *Farm* _____

_____ *District,* _____ *County, State of*

West Virginia, as follows:

INTEREST.	NAMES.	P. O. ADDRESS.

You will therefore transfer the same to _____ *credit* _____ *on your books.*

Pipe Line Tank Nos. _____

_____

_____

_____

_____

The assignee above named hereby certify and agree that ..... the legal owner of the well interest above transferred and authorize THE EUREKA PIPE LINE COMPANY, until further notice, to receive oil for transportation and storage pursuant to above transfer.

The Eureka Pipe Line Company is hereby authorized, until further notice, to receive oil from said wells for transportation for said parties severally in the proportions named, subject to the following conditions:

FIRST—Payment of a transportation charge of 20 cents per barrel;—all oil received from said wells shall be delivered at delivery station on its lines.

SECOND—The Eureka Pipe Line Company shall charge storage for the month, at the close of each month, on all oil so received, which was in its custody at the beginning of the preceding month, and still remains undelivered, at the rate of one-fortieth of a cent per barrel per day.

THIRD—The Eureka Pipe Line Company shall deduct two per cent. from all oil received from wells into its custody on account of evaporation and waste, and in addition shall deduct one-twentieth of one per cent. for each degree Fahrenheit above normal temperature to which said oil shall have been subjected, and oil shall be steamed or otherwise heated and settled before running whenever the representative of The Eureka Pipe Line Company deems it necessary.

FOURTH—The Eureka Pipe Line Company shall not in any event be liable for loss of petroleum resulting from lightning, fire, storms or other unavoidable causes, and such loss shall be charged pro rata upon all petroleum in its custody at the time of such loss, and transportation and all accrued storage charges shall be paid on the amount so deducted.

We agree in case of any adverse claim of title to furnish THE EUREKA PIPE LINE COMPANY satisfactory evidence of title, or failing to do so, to furnish satisfactory indemnity upon reasonable demand, against such adverse claim or claims, and that the said THE EUREKA PIPE LINE COMPANY may retain the oil until we do so, or until the dispute as to ownership is settled.

Witness:

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

NOTICE—The above Certificate of Transfer should be so filled as to show whether the interest specified is conveyed to an individual, tenants in common, a co-partnership, or corporation; and must be signed by all the parties concerned in making the transfer, or their duly authorized agents. The subjoined agreement should be signed in like manner by all persons to whom the transfer is made, or by their duly authorized agents.

1522 "EX. Hardy No. 1."

30106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., Oct. 1, 1917

W. C. Hardy, W. C. Mathews &

TO M. F. Matheny, Recvrs., # 19/e

& W. C. Hardy

Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 436 95/100 *bbls.*

upon which charges have accrued as follows:

Storage		$9	93
Pipeage			
Total Charges		$9	93

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1523 "Ex. Hardy No. 2"

030186 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., Oct. 1, 1917.

W. C. Hardy, W. G. Mathews &
TO M. F. Matheny, Recvrs.,
℄ W. C. Hardy,
Charleston, W. Va.

3 4/c

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 1007 95/100 bbls.

upon which charges have accrued as follows:

Storage		$13	39
Pipeage			
Total Charges		$13	39

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT

1524 2Ex. Hardy No. 3"

030184 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., Oct. 1, 1917

TO W.C. Mardy, W.G. Mathews & M.F. Matheny, Recvrs., % W.C. Hardy, Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 6.11 bbls.

upon which charges have accrued as follows:

Storage		$	.25
Pipeage			
Total Charges			.25

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT

1525 "Ex. Hardy No. 4"

036106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. Oct. 1. 1917.

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., #6 c/c
W. C. Hardy,
Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows.

A Credit Oil Balance of 476.17 bbls.
100

upon which charges have accrued as follows:

Storage		$4	72
Pipeage			
Total Charges		$4	72

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1. All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2. All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1526 "Ex. Hardy No. 5"

106166 103998

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., Oct. 1, 1917.

W. CHardy, W. G. Mathews &

TO M. F. Matheny, Recvrs., # 7 1/2

c/ W. C. Hardy,

Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 61.16/100 *bbls.*

upon which charges have accrued as follows:

Storage		$1	32
Pipeage			
Total Charges		$1	32

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1527 "Ex. Hardy No. 6"

030106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. Oct. 1, 1917.

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., ℄ W. C. Hardy, Charleston, W. Va.

#8 9/c

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 66.19 bbls.

upon which charges have accrued as follows:

Storage		$1	56
Pipeage			
Total Charges		$1	56

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent.

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1528 "Rx. Hardy No. 7"

050106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., Oct. 1, 1917.

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., ℔ W. C. Hardy, Charleston, W. Va. #9 c/c

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 194.47/100 *bbls.*

upon which charges have accrued as follows:

Storage		$4	35
Pipeage			
Total Charges		$4	35

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1529 "Ex. Hardy No. 8"

030184 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. Oct. 1, 1917.

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., & W. C. Hardy, Charleston, W. Va. #139/2

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 49.02 bbls. (100)

upon which charges have accrued as follows:

Storage		$1	05
Pipeage			
Total Charges		$1	05

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent.

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1530 "Ex. Hardy No. 9"

030106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., Oct. 1, 1917.

TO W. C. Hardy, W. C. Mathews & M. F. Matheny, Recvrs., c/ W. C. Hardy, Charleston, W. Va. #16 9/c

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 98.97/100 *bbls.*

upon which charges have accrued as follows:

Storage		$2	54
Pipeage			
Total Charges		$2	54

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT

1531 "Ex. HardyNo. 10"

030106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. Oct. 1, 1917.

W. C. Hardy, W. G. Mathews &
TO M. F. Matheny, Recvrs.,
℄ W. C. Hardy,
Charleston, W. Va.

#17 4/c

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 666.06 100 *bbls.*

upon which charges have accrued as follows:

Storage		$12	87
Pipeage			
Total Charges		$12	87

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1532 "Ex. Hardy No. 11"

930186 103592

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., % W. C. Hardy, Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 151.29 *bbls.*
100

upon which charges have accrued as follows:

Storage		2	20
Pipeage			
Total Charges		2	20

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent.

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1533 "Ex. Hardy #12"

030106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., 1/23/20

W. C. Hardy, W. G. Mathews

TO M. F. Matheny, Recvrs.,

& W. C. Hardy,

Charleston, W. Va.

#14

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 398.62 bbls.
100

upon which charges have accrued as follows:

Storage		13	90
Pipeage			
Total Charges		13	90

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1534 "Ex. Hardy #13"

030106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., 1/23/20

TO W. C. Hardy, W. C. Mathews & M. F. Matheny, Recvrs., #6
℄ W. C. Hardy,
Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 380.63 *bbls.*
100

upon which charges have accrued as follows:

Storage			11	88
Pipeage				
Total Charges			11	88

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1535 "Ex. Hardy #14"

036106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., c/ W. C. Hardy, Charleston, W. Va. #3

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 447.00 Bbls.

upon which charges have accrued as follows:

Storage		14	26
Pipeage			
Total Charges		14	26

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT

1536 "Ex. Hardy #15"

030106 103599

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., #7
& W. C. Hardy,
Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 79.80/100 *bbls.*

upon which charges have accrued as follows:

Storage		2 30
Pipeage		
Total Charges		2 30

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT

1537 "Ex. Hardy #16"

030106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., ℔ W. C. Hardy, Charleston, W. Va. #8

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 65.43 Bbls.

upon which charges have accrued as follows:

Storage		2	07
Pipeage			
Total Charges		2	07

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1538 "Ex. Hardy #17"

030104 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., & W. C. Hardy, #9

Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 237.82 bbls

upon which charges have accrued as follows:

Storage		7	06
Pipeage			
Total Charges		7	06

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1539 "Ex. Hardy #18"

036106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA., 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs.,
c/ W. C. Hardy,
Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 316.55/100 *bbls.*

upon which charges have accrued as follows:

Storage			11	31
Pipeage				
Total Charges			11	31

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1540 "Ex. Hardy #19"

330186 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. C. Mathews & M. F. Matheny, Recvrs., & W. C. Hardy, Charleston, W. Va. #11

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 604.30/100 *bbls.*

upon which charges have accrued as follows:

Storage		18	81
Pipeage			
Total Charges		18	81

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1541 "Ex. Hardy #20"

030106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., % W. C. Hardy, Charleston, W. Va. #13

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 45.86 bbls. 100

upon which charges have accrued as follows:

Storage		1	40
Pipeage			
Total Charges		1	40

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent.

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1542 "Ex. Hardy #21"

030106 103588

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., & W. C. Hardy, Charleston, W. Va. #16

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 55.16 Tbls. *upon which charges have accrued as follows:*

Storage		1	81
Pipeage			
Total Charges		1	81

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent.

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1543 "Ex. Haydy #22"

47

030106 103598

THE EUREKA PIPE LINE COMPANY.

PITTSBURGH, PA. 1/23/20

TO W. C. Hardy, W. G. Mathews & M. F. Matheny, Recvrs., #17
℄ W. C. Hardy,
Charleston, W. Va.

Your account appears on our Pittsburgh Office Production Books this date as follows:

A Credit Oil Balance of 347.99 bbls.
100

upon which charges have accrued as follows:

Storage		11	07
Pipeage			
Total Charges		11	07

which may be paid at any of the offices of the Company, or remittance made (in New York Exchange or Postal Money Order) to the undersigned at Pittsburgh, Pa.

THE EUREKA PIPE LINE COMPANY,

Per P. W. Swisher, Agent

Your attention is called to the following rules:

RULE 1.—All charges against active credit balances are payable whenever orders are drawn on them.
RULE 2.—All charges against inactive accounts (or such as have not been drawn against) must be paid at least once in six months.

RULE 2 APPLIES TO YOUR ACCOUNT.

1544 At a Circuit Court for Kanawha County Held at the Courthouse Thereof on the 8th Day of September, 1920.

In Chancery.

No. 5434.

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. ENGLAND, Attorney General of the State of West Virginia.

This cause having been submitted to the court for final consideration, decision and decree, and the court having taken time to consider thereof, and now being advised to its judgment herein, and being of the opinion to find for the plaintiff, for reasons set forth in a written memorandum prepared by the court and this day presented, and now filed herein and made part of the record hereof, which is in words and figures following, that is to say:

1545 "In the Circuit Court of Kanawha County, West Virginia.

In Chancery.

No. 5434.

EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General.

Memorandum by the Court.

RUMMEL, *Judge:*

The bill of complaint in this cause, brought by the Eureka Pipe Line Company, a West Virginia corporation, has for its object the enjoining of the defendants, the State Tax Commissioner and Attorney General of the State, from enforcing as against the plaintiff an act of the Legislature known as Chapter 5 of the Acts of the Extraordinary Session of said Legislature held in 1919.

Said act, so far as its provisions are pertinent to an examination of the questions here raised, reads as follows:

"No person, firm or corporation, hereinafter called company, after the first day of July, one thousand nine hundred and nineteen, shall engage in or continue in the business of the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, without the payment of an annual privilege tax hereby

imposed for engaging in such business; provided, however, that nothing contained in this act shall apply to any person,
1546 firm or corporation engaged in the business aforesaid where the crude oil, petroleum or distillate thereof, or natural gas, is by the entire system of such person, firm or corporation, transported a distance of less than ten miles.

Every person, firm and corporation engaged in this state in the transportation of either crude oil or petroleum, or the products and distillates thereof, or of natural gas, or both, by means of pipe lines for sale to consumers within or without the state, or use within or without the state in the making of any product derived therefrom, shall pay to the state, as an annual privilege tax for engaging in such business in the state, two cents for each barrel of crude oil or petroleum, or the distillates thereof, and one-third of one cent for each thousand cubic feet of such natural gas as is so transported or conveyed within this state. Provided, that only one such tax, annually, shall be required to be so paid."

(Then follow provisions requiring returns to be made, and the tax to be assessed by the State Tax Commissioner, etc.)

The bill alleges that acting under the authority of said act, the Tax Commissioner has prescribed forms for returns to be made by persons and companies affected thereby, and has issued rules and regulations for ascertaining and assessing the tax imposed by the act; and said Tax Commissioner has also informed the plaintiff that it is within the terms of said act and must comply with all the requirements thereof, and file the return above mentioned; to the end that an assessment may be made against it as provided in the act. These allegations are admitted by the joint answer filed.

The bill, as ground for the injunction sought, asserts that
1547 said act, referred to therein as the "Transportation Tax Act," is unconstitutional, illegal, invalid and void, and alleges numerous constitutional objections thereto, which will be hereinafter enumerated. It sets out at great length the history and nature of the plaintiff's business, and shows that this company owns approximately 4,500 miles of pipe line, all within the State of West Virginia, and used in the transportation and incidental storage of crude oil for hire; that the oil handled by the plaintiff is practically all produced in West Virginia, Pennsylvania, Ohio, Kentucky and Illinois, and in what is known as the Mid-Continent field, which includes the States of Kansas, Oklahoma and part of Texas; that the plaintiff's lines have been used almost exclusively for transporting oil, by means of its lines and those of connecting carriers, in interstate commerce, for delivery to refineries situated in other states; that oil is delivered to the plaintiff at the various state lines by connecting carriers, and is in turn delivered by the plaintiff to other connecting carriers at the West Virginia-Pennsylvania state line, the flow of oil past all these points being continuous, and the plaintiff's lines being part of an extensive system extending through a large number of states; that oil produced in other states, as well as in West Virginia, is consigned by the owners to refineries in other

states, and passes through the plaintiff's lines and those of connecting carriers, the plaintiff being a common carrier, and such oil being transported under tariffs on file with the Interstate Commerce Commission; in addition to such oil transported to points outside the state, the plaintiff also makes deliveries within the state to refineries at Parkersburg, St. Marys and Falling Rock, and at Littleton and Morgantown to connecting carriers for t-ansportation out of the state; that all oil received from outside the state dur-
1548 ing the year ending July 1, 1919, was transported through the state and re-delivered at the Pennsylvania line for transportation and delivery wholly without the state, it inferentially appearing that all oil delivered by the plaintiff at points in the state, as aforesaid, was produced within the state. It is alleged that the plaintiff transported during the year in question an aggregate of 22,531,315.06 barrels of crude oil, made up as follows:

(1) Produced in West Virginia, transported and delivered therein	1,239,099.55 bbl.
(2) Produced in West Virginia, transported to Pennsylvania state line and delivered to connecting carriers	4,637,888.68 "
(3) Produced in West Virginia, transported therein, and delivered in West Virginia to connecting carriers for further transportation to points outside of state	638,590.79 "
(4) Produced outside West Virginia, transported across the state, and delivered at Pennsylvania state line to connecting carriers	16,015,736.04 "
Total	22,531,315.06 bbl.

The bill sets out the nature and amounts of the various property taxes, license taxes, and excise taxes which the plaintiff is required by the laws of the state to pay, in addition to the privilege tax hereby sought to be enjoined, which taxes need not be here noticed in detail; and the allegation is made, in this connection, that the tax in question, while purporting on its face to be a privilege tax, is in fact and in effect a tax upon freight in transit, to-wit, the crude oil handled by the plaintiff, most of which was transported in interstate commerce.

1549 The plaintiff further avers that its total net income for the year ending June 30, 1919, was $640,768.22, and that its net income for the calendar year 1919 will probably be considerably less than $450,000; while the tax proposed to be assessed under said Transportation Tax Act, namely, two cents per barrel of oil transported during the year ending July 1, 1919, will amount to $450,628.30.

The grounds for the attack thereupon made by the bill upon the validity of the act in question may be roughly summarized as follows:

(1) The act burdens and attempts to regulate interstate commerce.

(2) The act attempts to lay imposts and duties on imports and exports.

(3) The act deprives the plaintiff of its property without due process of law, and denies plaintiff the equal protection of the laws.

(4) The act imposes a tax not equal and uniform.

(5) The act constitutes a local or special law forbidden by the state constitution.

(6) The penalties imposed by the act are excessive.

(7) The act is confiscatory of plaintiff's property.

The charge is made that in these respects, and in other respects also enumerated, the act violates various provisions of the state and federal constitutions, and is therefore null and void. The prayer of the bill, therefore, is that the defendants be enjoined from enforcing the law, and the tax provided thereby, as against the plaintiff.

The defendants, by their joint answer filed, aver that the act of the Legislature in question is a valid law of the state, and that the
1550 plaintiff is within the terms thereof and subject to the privilege tax thereby imposed; while disclaiming any purpose to enforce against the plaintiff any penalties, fines or forfeitures, which under the terms of the act might accrue pending the present litigation to secure an adjudication as to its validity.

They deny that the Transportation Tax Act is unconstitutional, illegal, invalid or void, and deny that the State of West Virginia by said act seeks to levy any tax or impose any burden upon oil or gas moving in interstate commerce. They aver that, properly construed, the act forbids persons, firms and corporations engaging in the business of intra-state transportation of oil or gas without the payment of the privilege tax prescribed, the amount of which tax is measured by the number of barrels of oil, or thousand cubic feet of gas, transported within the state. They contend that the state has power to lay a privilege tax upon such business and to measure it in that way.

The defendants further allege that the pipe lines connecting with plaintiff's lines, mentioned in the bill as located in adjoining states, are owned by corporations affiliated with the plaintiff and with each other, engaged in a single transportation enterprise of which the plaintiff's system is a part, and that all of said corporations are subsidiaries of, and controlled by, the Standard Oil Company of New Jersey.

They further charge that the oil received by the plaintiff from other states through connecting carriers goes into a common reservoir and is mixed and mingled with the oil produced in this state, and which is at the same time being stored or transported in local or intra-state commerce, and that such foreign oil thereby loses its identity as such, and ceases to be an article of interstate commerce.

They set out that on September 16, 1919, the Public Service Commission of West Virginia authorized the plaintiff to
1551 increase its rates *for* gathering, transporting and delivering oil in this state, from twenty cents per barrel to thirty cents per barrel, which increase has been in effect since September 20, 1919. They deny that the proposed tax is confiscatory, and make the contention that if the rates now charged by the plaintiff are found too small to be remunerative, after paying the tax, further increases may be secured.

The cause has been matured by appearance and the taking of depositions, and by agreement has been fully heard and submitted for final decision upon the application for injunction. The points of law, as well as of fact, have been elaborately argued by able counsel on both sides; and the importance of the controversy to the state and to those companies which may be affected by the Transportation Tax, as well as the intricacy of the questions involved, have dictated that the court prepare and file this memorandum.

Coming at once to what our consideration has convinced us is the leading and pivotal question in the case, we shall consider first whether the proposed tax measure constitutes an unwarranted interference with interstate commerce. Upon this question, undoubtedly, the decisions of the Supreme Court of the United States are controlling. We fail to find, however, among the numerous decisions of that Court affirming or denying the constitutionality of tax regulations imposed by the various states, any utterance respecting a law precisely like the one now in controversy. It seems conceded that this law is distinguishable in character from any that has heretofore been before the courts.

It is true, numerous decisions may be found, and they are cited and relied on by the respective parties here, on the one hand
1552 upholding and enforcing tax laws and other state regulations somewhat similar to the one here in question, and on the other hand denouncing as unconstitutional, null and void, other laws likewise very similar in import. The difficulty arises in deducing from these decisions the principle upon which these distinctions are made, and the principle which should govern us here.

The principle is enunciated in numerous cases by the Supreme Court of the United States that no state license or indirect taxation of any kind, nor any system of state regulation, can be imposed upon inter-state commerce, as this would interfere with the power of Congress in the regulation of such commerce. Among leading cases upholding this doctrine in various phases, may be cited the following:

Crutcher v. Kentucky, 141 U. S. 47.
Leloup v. Port of Mobile, 127 U. S. 640.
Robbins v. Shelby Co. Taxing Dist., 120 U. S. 489.
Western Union T. Co. v. Kansas, 216 U. S. 1.
Moran v. New Orleans, 112 U. S. 69.
Galveston, &c., Ry. Co. v. Texas, 210 U. S. 217.
Oklahoma v. Wells Fargo & Co., 223 U. S. 298.

On the other hand, numerous decisions have held not only that the property of a corporation engaged in interstate business is not exempt from taxation by a state, but also that a state may impose a license or other tax upon such corporation for the privilege of doing business within the state, and may measure the amount of such tax by reference to property used in interstate commerce, or incomes derived from interstate commerce. This distinction between the subject of the tax and the measure of the tax appears to have
1553 been recognized in the following cases, among others:

Maine v. Grand Trunk R. Co., 142 U. S. 217.
Flint v. Stone Tracy Co., 220 U. S. 107.
R. R. Co. v. Botkin, 240 U. S. 227.
Maxwell v. Bugbee, decided October 27, 1919.
American Mfg. Co. v. St. Louis, decided June 9, 1919.
U. S. Express Co. v. Minnesota, 223 U. S. 335.

The difficulty of reconciling these two doctrines has been well expressed by Woods, J., in the case of Postal, &c., Cable Co. v. Adams, 71 Miss. 555, whose language in this connection may be adopted here:

"The record presents a Federal question, and we acknowledge ourselves bound to follow the decisions of the court of last resort of the United S ates, if that court shall be found to have adjudicated it. Our difficulty arises from our inability to say with confidence what the Supreme Court of the United States has finally determined in cases of like character. The reported decisions of that court are so irreconcilable in their variances and seeming conflicts, in our view, that it is with diffidence that the impartial student can affirm what will or will not follow in any given state of case. If the line of decisions adopted in Pensacola Teleg. Co. v. Western U. Teleg. Co., 96 U. S. 1, 24 L. Ed. 708; Western U. Teleg. Co. v. Texas, 105 U. S. 460, 26 L. Ed. 1067; Glouces'er Ferry Co. v. Pennsylvania, 114 U. S. 196, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep., 826; Pickard v. Pullman Southern Car Co., 117 U. S. 34, 6 Sup. Ct. Rep. 635; Robbins v. Shelby County Taxing Dist., 120 U. S. 489, 1 Inters. Com.
1554 Rep. 45, 7 Sup. Ct. Rep. 592; Leloup v. Port of Mobile, 127 U. S. 640, 2 Inters. Com. Rep. 134, 8 Sup. Ct. Rep. 1380; and Crutcher v. Kentucky, 141 U. S. 47, 11 Sup. Ct. Rep. 851,—stood alone, the settlement of the controversy in the case at bar would be made without great difficulty in accordance with the contention of the appellant. If we had for our guidance only the other line of decisions, embracing State Tax on Railway Gross Receipts, 15 Wall. 284, sub nom. Philadelphia & R. R. Co. v. Pennsylvania, 21 L. Ed. 164; Osborne v. Mobile, 16 Wall. 479, 21 L. Ed. 470; Wiggins Ferry Co. v. East St. Louis, 107 U. S., 365, 27 L. Ed. 419, 2 Sup. Ct. Rep. 931; Maine v. Grand Trunk R. Co., 142 U. S. 217, 35 L. Ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163; Ficklen v. Shelby County Taxing Dist., 145 U. S. 1, 36 L. Ed. 601, 4 Inters. Com. Rep. 79, 12 Sup. Ct. Rep., 810; St. Louis v. Western U. Teleg. Co., 148 U. S. 92, 37 L. Ed. 380, 13 Sup. Ct. Rep. 485,—the right of the revenue agent of the state to maintain this suit successfully would seem to be

well established in accordance with the views of the counsel for the appellee."

It may be noted that in the case just cited the state court sustained the tax in question, and the case was later affirmed by the Supreme Court of the United States. 155 U. S. 688.

But it is apparent when all of these cases are read together, that although the state may inaugurate such a system of taxation, to be valid it must not in its practical effect and operation burden interstate commerce.

The Transportation Tax Act now in question, so far as it affects the plaintiff, seeks to levy a license tax upon the privilege of transporting oil by means of pipe lines. Let us grant the con-
1555 tention of defendants that the tax is upon the privilege of so transporting oil within the state. The amount of the tax is sought to be measured by a rate per barrel of all such oil so transported within the state. But, admittedly, very much the greater part of the oil so transported is moving in interstate commerce. The law imposes in practical effect a tax and burden upon each barrel of oil transported, whether in interstate or intrastate commerce. It is argued that the tax is only upon a certain privilege; but it is seen that the amount of the tax depends absolutely upon the quantity of oil transported. If the amount of oil transported is great, the tax for the privilege is large; if the amount is small, the tax for the privilege is decreased in proportion. And this oil which is thus taxed, or which thus fixes the amount of the privilege tax, is chiefly oil which is concededly moving in interstate commerce. In our opinion, this too closely approximates a direct tax upon the oil itself, or the business of carrying the same in interstate commerce; and this we understand is forbidden by the federal constitution, as construed in the decisions of the Supreme Court of the United States above cited, and numerous others.

It is true that not all of the oil transported by the plaintiff by means of pipe lines is moving in interstate commerce. A considerable quantity (in the statement above for the year ending July 1, 1919, it is 1,239,099.55 barrels) is produced in West Virginia, and transported, sold and used in this State. As to such oil it would seem to be competent for the state to impose a privilege tax such as is levied by this law. But has the state done this by the act in question? If it can be contended that the tax affects this particular oil it is only incidental to the like tax imposed upon the whole body of oil transported. It is plain the legislature did not mean to dis-
1556 tinguish as between the two classes of oil, for the act makes no attempt at a division. We are not able to say from an inspection of the act whether or not the legislature would have imposed the tax upon the privilege of handling this intra-state oil alone had it been exempting the balance of the oil when framing the law, as we think it should have done. Whether it would have made the tax applicable to the West Virginia oil alone, no one can say; and this we understand to be the test of whether or not the act is divisible. Eckhart v. State, 5 W. Va. 515; Robertson v. Preston, 97 Va. 296; Trimble v. Comm., 96 Va. 818.

The conclusion we reach is that the Transportation Tax Act is to plainly in effect a tax and burden upon that which the state has n power to tax or regula e, namely, interstate commerce. And in so fa as the law affects intra-state commerce, it is only incidentally, an the two are so closely interwoven in the act, which treats them a one, tha' the court can not separate the taxes imposed upon ther and say that one is constitutional and the other unconstitutional.

This conclusion renders unnecessary an examination of the nu merous other grounds advanced for invalidating the law, or passin upon the motion to strike from the bill the words "incidental sto age" wherever they appear.

A decree may be prepared, restraining the defendants from en forcing the Transportation Tax Act against the plaintiff in any re spect.

September 8th, 1920.

1557 It is therefore adjudged, ordered and decreed that the de fendant Walter S. Hallanan, State Tax Commissioner of th State of West Virginia, and all persons acting under his authority o direction, be and are perpetually inhibited, enjoined and restraine from enforcing, or attempting to enforce, in any manner or respect the said Transportation Tax Act, being Chapter 5 (House Bill No. 3 of the Acts of the Legislature of the State of West Virginia, extraor dinary session held in 1919, or any part of said Act against plaintiff and from requiring it to make any return or report to him of th amount of oil or gas transported by it, and from assessing upon o against it any tax thereunder, and from collecting or proceeding t collect from it, in any manner, any tax thereunder, or any penalty or fine therein prescribed, and that the defendant E. T. England Attorney General of the State of West Virginia, and all persons actin under his authority, advice or direction, be and are perpetually in hibited, enjoined and restrained from enforcing, or attempting t enforce, any and every part of said Act, against plaintiff, and from proceeding to have plaintiff, its property, agents or employees, held liable for any tax, penalty or any fine therein prescribed, and tha the said Act be, and the same is hereby, decreed herein to be void as to the plaintiff, its property, franchises and business.

1558 STATE OF WEST VIRGINIA,
Kanawha County, ss:

I, A. P. Hudson, Clerk of the Circuit Court for said County and in said State, do hereby certify, that the foregoing is the complete record in the chancery cause of The Eureka Pipe Line Company, a corpora tion, vs. Walter S. Hallanan, State Tax Commissioner et al.

Given under my hand and the seal of said Court this 10th day of September, 1920.

[SEAL.]

A. P. HUDSON,
Clerk, Kanawha Circuit Court.

1559 *Pleas Before the Supreme Court of Appeals of the State of West Virginia.*

Be it Remembered, that — a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on Friday, the 10th day of September, 1920, the following order was made and entered, to-wit:

Absent: Judge Williams.

EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN, State Tax Comr., et al.

This day came Walter S. Hallanan, State Tax Commissioner, and E. T. England, Attorney General, of the State of West Virginia, by E. T. England, Attorney General, Frank Lively, Assistant to the Attorney General, S. B. Avis, W. G. Mathews, Jno. T. Simms and Fred O. Blue, their attorneys, and presented to the Court a petition praying for an appeal from a decree of the Circuit Court of Kanawha County, pronounced on the 8th day of September, 1920, in a cause in which the Eureka Pipe Line Company was plaintiff and said petitioners were defendants, with a record of the decree aforesaid accompanying the petition, which being seen and inspected by the Court, the appeal and supersedeas prayed for is allowed, but the same is not to take effect until the petitioners, one of them or some person or persons for them, shall have given, before the Clerk of the Circuit Court of Kanawha County, bond with good personal security in the penalty of One Thousand Dollars, conditioned according to law.

The petition aforesaid is in the words and figures following:

1560 In the Supreme Court of Appeals of West Virginia.

In Equity.

THE EUREKA PIPE LINE COMPANY, a Corporation,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia.

In the Circuit Court of Kanawha County.

To the Honorables, The Judges of the Supreme Court of Appeals of West Virginia:

Your petitioners, Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, respectfully represent that they are

aggrieved by a final decree pronounced and entered by the Circuit Court of Kanawha County, West Virginia, on the 8th day of September, 1920, in a certain suit in equity therein pending, wherein the Eureka Pipe Line Company, a corporation, was plaintiff and your petitioners were defendants.

The original papers, record and attested copy of the said final decree, all duly certified as required by law are presented herewith.

Your petitioners assign the following errors to their prejudice:

First. The Court below erred in its conclusion that the Transportation Tax Act, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, extraordinary session held in 1919, is too plainly in effect a tax and burden upon that which the state has no power to tax or regulate, namely, interstate commerce. And in so far as the law affects intra-state commerce, it is only incidentally, and the two are so closely interwoven in the act, which treats them as one, that the court can not separate the taxes imposed upon them and say that one is constitutional and the other unconstitutional.

Second. The Court below erred in finding and decreeing that the said Transportation Tax Act is void as to the plaintiff, its property, franchises and business.

1561 Third. The Court below erred in perpetual inhibiting, enjoining and restraining your petitioners, and each of them, and all persons acting under the authority of your petitioners or either of them, from enforcing or attempting to enforce, in any manner or respect, the said Transportation Tax Act, or any part thereof, against the plaintiff, the Eureka Pipe Line Company, and from requiring it to make any return or report to your petitioner, Walter S. Hallanan, State Tax Commissioner, of the amount of oil or gas transported by it, and from assessing upon or against it any tax thereunder, and from collecting or proceeding to collect from it in any manner any tax thereunder, or any penalty or fine therein prescribed.

And for these and other errors apparent upon the face of the record, or that may be hereafter assigned in argument, your petitioners pray for an appeal from said decree of September 8, 1920.

WALTER S. HALLANAN,
State Tax Commissioner of West Virginia;
E. T. ENGLAND,
Attorney General of West Virginia,
Petitioners,

By Their COUNSEL.

E. T. ENGLAND,
Attorney General of West Virginia;
FRANK LIVELY,
Assistant Attorney General;
S. B. AVIS,
W. G. MATHEWS,
JOHN T. SIMMS,
FRED O. BLUE,
Their Counsel.

I, Fred O. Blue, an attorney-at-law practicing in the Supreme Court of Appeals of West Virginia, do certify, that in my opinion there is error in the decree complained of in the above petition and that the same should be reviewed by said Court.

Given under my hand this 9th day of September, 1920.

FRED O. BLUE.

STATE OF WEST VIRGINIA, *To-wit:*

The appeal prayed for in the foregoing petition was allowed in Court at Charleston, on the 10th day of September, 1920. Bond is required in the penalty of $1,000.00, conditioned according to law.

Attest:

WM. B. MATHEWS,
Clerk Supreme Court of Appeals.

1562 At another day, to-wit, on the 29th day of September, 1920, the following order was made and entered in this case:

Absent: Judge Williams.

4196.

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, et al., Defendants Below, Appellants.

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 8th Day of September, 1920.

This day came the appellants, by E. T. England, Attorney General, S. B. Avis, W. G. Mathews and Fred O. Blue, their attorneys, and asked leave of the Court to make a motion to reverse the decree aforesaid, and in the event such leave is granted, that the matters arising thereon may be heard upon the original record in said cause; upon consideration whereof, the Court is of opinion to and hereby doth grant leave to make such motion and to permit the matters arising on said motion to be heard upon the original record as requested, and for reasons appearing to the Court, Monday, the 8th day of November, 1920, is fixed as the date for hearing this cause provided notice of said motion shall have been given as required by section 1 of Rule VIII of this Court.

The Notice of Motion to Reverse said decree referred to in the foregoing decree is in the words and figures following:

1563 In the Supreme Court of Appeals of West Virginia.

In Equity.

THE EUREKA PIPE LINE COMPANY, a Corporation, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Appellants.

Notice of Motion to Reverse under Section 1, *Rule* VIII, *of the Printed Rules of This Court.*

To the Eureka Pipe Line Company, a Corporation:

The appellants in the above styled cause, Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, leave having been granted to them by the Supreme Court of Appeals of West Virginia on the 30th day of September, 1920, to make and submit a motion to reverse the final decree of the Circuit Court of Kanawha County, West Virginia, in the above styled cause, made and entered on the 8th day of September, 1920, do hereby notify you that on the 8th day of November, 1920, at 10:00 o'clock in the forenoon, they will make a motion in the Supreme Court of Appeals of West Virginia at its court room in the City of Charleston, Kanawha County, West Virginia, to reverse said decree of said Circuit Court of Kanawha County, West Virginia, as provided by Section 26, Chapter 135, of the Code of West Virginia, as amended by Chapter 69 of the Acts of the Legislature of West Virginia, 1915,
1564 and as provided by the Rules of the Supreme Court of Appeals of West Virginia, on the following grounds:

First. The Court below erred in its conclusion that the Transportation Tax Act, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, extraordinary session held in 1919, is too plainly in effect a tax and burden upon that which the State has no power to tax or regulate, namely, interstate commerce. And in so far as the law affects intrastate commerce, it is only incidentally, and the two are so closely interwoven in the Act, which treats them as one, that the Court cannot separate the taxes imposed upon them and say that one is constitutional and the other unconstitutional.

Second. The Court below erred in finding and decreeing that the said Transportation Tax Act is void as to the plaintiff, its property, franchises and business.

Third. The Court below erred in perpetually inhibiting, enjoining and restraining your petitioners, and each of them, and all persons acting under the authority of your petitioners, or either

of them, from enforcing or attempting to enforce, in any manner or respect, the said Transportation Tax Act, or any part thereof, against the plaintiff, The Eureka Pipe Line Company, and from requiring it to make any return or report to your petitioner, Walter S. Hallanan, State Tax Commissioner, of the amount of oil or gas transported by it, and from assessing upon or against it any tax thereunder, and from collecting or proceeding to collect from it in
1565 any manner any tax thereunder, or any penalty or fine therein prescribed.

You are further notified that at the aforesaid Court at said time and place counsel for the undersigned will make and submit oral and written arguments in support of their said motion to reverse, at which time please see that your counsel are prepared to make and submit oral and written arguments, if desired by you, on your behalf and in opposition to said motion to reverse.

WALTER S. HALLANAN,
State Tax Commissioner of West Virginia;
E. T. ENGLAND,
Attorney General of West Virginia,
Appellants.

By COUNSEL.

E. T. ENGLAND,
Attorney General of West Virginia;
FRANK LIVELY,
Assistant Attorney General;
JOHN T. SIMMS,
Counsel for State Tax Commissioner's Office,
Attorneys for Appellants.

S. B. AVIS,
W. G. MATHEWS,
FRED O. BLUE,
Special Counsel for Appellants.

1566 [Endorsed:] In the Supreme Court of West Virginia. In Equity. The Eureka Pipe Line Company, a corporation, appellee, vs. Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, appellants. Notice of motion to reverse. Avis & Donnally, attorneys and counsellors at law, Charleston, West Virginia. Charleston National Bank Building.

Service of this process accepted on behalf of The Eureka Pipe Line Company, this the 1 day of October, 1920.

J. S. DARST,
Auditor.

1567 At another day, to-wit, on the 6th day of October, 1920, the following order was made and entered:

Absent: Judge Williams.

4196.

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, et al., Defendants Below, Appellants.

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 8th Day of September, 1920.

This day came the defendants and appellants, by S. B. Avis and Fred O. Blue, of their counsel, and the plaintiff and appellee, by Charles Powell and Kemble White, of its counsel, and said plaintiff and appellee, expressing a desire to have the record in this cause printed before the date of the submission of the motion to reverse the final decree in the same, it is ordered, by and with the consent of the parties, that the said record be printed under the supervision of the Clerk of this Court, and at the expense of said plaintiff and appellee, and that the same may be printed from the original record now in the custody of this Court, and that for the purpose of so printing the same the Clerk of this Court is authorized to take or send, under his own supervision the said original record to a point outside of this State.

Given under our hands this 6th day of October, 1920.

S. B. AVIS,
W. G. MATHEWS,
FRED O. BLUE,
Of Counsel for Defendants and Appellants.
CHARLES POWELL,
KEMBLE WHITE,
Of Counsel for Plaintiffs and Appellees.

1568 At another day, to-wit on the 8th day of November, 1920, the following order was made and entered:

Absent: Judge Williams.

4196.

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, et al., Defendants Below, Appellants.

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 8th Day of September, 1920.

This day came the appellants, by E. T. England, Attorney General, Frank Lively, Assistant to the Attorney General, John T.

Simms, S. B. Avis, Wm. Gordon Mathews and Fred O. Blue, their attorneys, and pursuant to leave of the Court previously obtained and notice duly executed, moved the Court to reverse the decree aforesaid, and thereupon came the appellee, by Frank L. Crawford, A. B. Fleming, Charles Powell, Kemble White and H. C. Dorworth, its attorneys, and resisted said motion, and this cause was partially heard upon the motion to reverse the decree aforesaid and the arguments of counsel, and is continued until tomorrow morning for further hearing.

At another day, to-wit, on the 9th day of November, 1920, the following order was made and entered:

Absent: Judge Williams.

4196.

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, et al., Defendants Below, Appellants.

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 8th Day of September, 1920.

This day again came the parties, by counsel, and this cause was fully heard upon the motion to reverse the decree aforesaid and the arguments of counsel thereon, and is submitted for decision.

1569 At another day, to-wit, on the 26th day of November, 1920, the following order was made and entered:

Absent: Judges Williams and Lynch.

4196.

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, et al., Defendants Below, Appellants.

Upon an Appeal from a Decree of the Circuit Court of Kanawha County Pronounced on the 8th Day of September, 1920.

The Court, having maturely considered the motion to reverse the decree aforesaid, the record thereof and the arguments of counsel thereon, is of opinion to, for reasons stated in writing and filed with the record, and hereby doth, sustain said motion as to part of said decree and overrule said motion as to the remainder thereof. It is

therefore adjudged, ordered and decreed that the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 8th day of September, 1920, in so far, and in so far only, as it decrees and holds the Transportation Act, mentioned and described in the bill and proceedings in this cause, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, extraordinary session of 1919, to be void and perpetually inhibits, enjoins and restrains the appellants from enforcing or attempting to enforce against the appelle-, in any manner or respect, the provisions of said act in so far as the same apply to intrastate commerce as defined in the written opinion filed herein, be and the same hereby is set aside, reversed and annulled, and that in all other respects said decree be and the same hereby is affirmed, and that the appellee do pay to the appellants their costs about the prosecution of their appeal in this Court in this behalf expended: all of which is ordered to be certified to the Circuit Court of Kanawha County.

The decision of points in the foregoing cause, as the same appears from the syllabus and written opinion prepared by Judge Ritz, was concurred in by Judges Poffenbarger and Miller.

The syllabus and written opinion referred to in the foregoing order are in the words and figures following:

1570 No. 4196.

EUREKA PIPE LINE COMPANY

v.

WALTER S. HALLANAN et al.

No. 4201.

UNITED FUEL GAS COMPANY

v.

WALTER S. HALLANAN et al.

Kanawha County.

Affirmed in Part; Reversed in Part.

Ritz, Judge.

1. There is a presumption that the legislature in the passage of an act did not intend to violate the constitution of this state, or of the United States, and if such an act is susceptible of two constructions, one of which would make the same invalid as in violation of the constitu-ion of this state, or of the United States, and the other give validity to the act, the latter interpretation will be adopted upon the theory of legislative intent not to violate any provision of either of said instruments.

2. There is a presumption that the legislature in the passage of an act intended that it should be effective, and if such an act is susceptible of two constructions, one of which would render the act invalid as being in violation of the constitution of this state, or of the United States, and the other sustain the validity of the act, the latter will be adopted upon the presumption that the legislature intended that construction to be given to the act that would make it effective.

1571

3. A state may not impose a tax upon the privilege of engaging in interstate commerce within its borders.

4. A state may not impose a tax upon the privilege of engaging in intrastate commerce, and measure the amount thereof by a certain percentage of all of the business transacted within the state, whether interstate or intrastate.

5. Chapter 5 of the Acts of the Legislature, Extraordinary Session, 1919, imposing a tax upon the business of engaging in the transportation of oil and gas by pipe lines, properly construed, imposes such tax only on those engaged in the transportation of such commodities in intrastate commerce, measured by the amount of such commerce.

6. The classification, for the purpose of taxation, of pipe line companies engaged in the business of transporting oil and gas into those whose systems are under ten miles in length, and those whose systems are over ten miles in length, is founded upon a substantial distinction, and is not violative of that clause of the fourteenth amendment to the Constitution of the United States guaranteeing to all persons the equal protection of the laws, nor of section 1 of article 10 of the Constitution of this state, the tax imposed applying alike to all in the same class.

7. Chapter 5 of the Acts of the Extraordinary Session of the Legislature, 1919, imposing a tax upon the privilege of engaging in the business of transporting oil or gas by pipe lines is not invalid because it does not specify at what pressure the gas shall be measured for the purpose of the imposition of such tax. Any difficulty in administering the law on this account may be overcome by a regulation which the State Tax Commissioner is authorized by the provisions of the act to make.

1572

8. Chapter five of the Acts of the Legislature, Extraordinary Session, 1919, imposing a tax upon the privilege of engaging in the business of transporting oil or gas by pipe lines over ten miles in length, properly construed does not violate any provision of the Constitution of the United States or the

Constitution of this state, and is a valid and binding legislative act.

9. Commodities in transit cannot be said to be interstate commerce until it is definitely determined that they are destined to points without the state, even though past experience and the course of business in which the owner of such commodity is engaged may justify the assumption that a large part thereof will ultimately be transported beyond the borders of the state.

10. Oil being transported through this state to a point beyond its borders does not cease to be interstate commerce because it may as an incident of its transportation through the pipe line come in contact with other oil, and to some extent thereby be contaminated. Such contamination is merely an incident of the transportation, and does not change the character of the oil as interstate commerce.

11. A pipe line company doing business in this state which receives the oil produced at numerous wells and transports the same to its main pipe lines or tanks within the state, and makes a definite charge for such service, is engaged in intrastate commerce, as to the oil so transported, where it appears that at the time such oil was so received and transported to its main lines or tanks by it it was not definitely determined that the same was destined to points without the state, even though past experience may indicate and justify the belief that a large part of the same will ultimately be shipped without the state in interstate commerce.

1573 RITZ, *Judge:*

These appeals bring up for review decrees of the Circuit Court of Kanawha County entered in the above entitled causes holding invalid an act of the Legislature providing for a tax on the transportation of oil and gas by means of pipe lines, and enjoining the defendants from collecting the tax levied by said act.

The act in question is chapter five of the Acts of the Extraordinary Session of the Legislature of 1919, the pertinent provisions thereof being:

"An act to levy a privilege tax on any person, firm or corporation engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the state tax commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the state tax commissioner hereunder.

Be it enacted by the Legislature of West Virginia:

Section 1. No person, firm or corporation, hereinafter called company, after the first day of July, one thousand nine hundred and nineteen, shall engage in or continue in the business of the trans-

portation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, without the payment of an annual privilege tax hereby imposed for engaging in such business; provided, however, that nothing contained in this act shall apply to any person, firm or corporation engaged in the business aforesaid where the crude oil, petroleum or distillates thereof, or natural gas, is by the entire system of such person, firm or corporation, transported a distance of less than ten miles.

Sec. 2. Every person, firm or corporation engaged in this state in the transportation of either crude oil or petroleum, or the products and distillates thereof, or of natural gas, or both, by means of pipe lines for sale to consumers within or without the state, or use within or without the state in the making of any products derived
1574 therefrom, shall pay to the state, as an annual privilege tax for engaging in such business in the state, two cents for each barrel of crude oil or petroleum, or the distillates thereof, and one-third of one cent for each thousand cubic feet of such natural gas as is so transported or conveyed within this state. Provided, that only one such tax, annually, shall be required to be so paid.

Sec. 9. Any company engaging or continuing in the business aforesaid, without having first secured a license, as hereinbefore provided, shall be liable to a fine of not less than one thousand dollars nor more than ten thousand dollars."

The contention of the complainants is that this act is in violation of the commerce clause of the Constitution of the United States, for the reason that the tax therein provided to be collected is a burden upon such commerce. Further that it violates the provision of the fourteenth amendment to the United States Constitution guaranteeing the equal protection of the laws, as well as section 1 of article 10 of the Constitution of this state, providing among other things that the legislature may levy a tax on privileges and franchises by equal and uniform laws. And the gas company also claims that it is invalid upon the additional ground that it does not prescribe a certain measure for the tax inasmuch as it transports gas under varying pressures, the bulk of which varies because of the differing pressures under which it is transported, and this act not prescribing any particular pressure at which the gas should be measured, there is no certain measure for the tax, wherefore it is void for uncertainty.

The complainant, Eureka Pipe Line Company, is engaged in the business of transporting oil by means of pipe lines. It does not engage in the business of buying and selling or producing this substance, but simply transports it from one point to another for its patrons, upon tariffs prescribing regular charges for such service. It has a pipe line extending from a point on Tug River in
1575 Wayne county, through the state, to a point on the Pennsylvania state line. At its southern terminus on Tug River it connects with the Cumberland Pipe Line Company's system, and at its northern terminus on the Pennsylvania state line it connects with

the pipe line systems of the Southern Pipe Line Company and the Southwestern Pipe Line Company. It also has a connection at Eureka on the Ohio river with the Buckeye Pipe Line Company, this connection being made by a branch extending from Braden, a point on the line between Tug River and Morgantown, to the Ohio River at Eureka. In addition to these trunk lines the Eureka Company owns many miles of branch or gathering lines extending from the main pipe lines to the fields where the oil is produced, and through which gathering lines it is collected and conducted from the producing wells to the trunk lines, through which it is shipped to market. In addition to handling large quantities of oil produced in West Virginia in this way, it receives at the Tug River terminus a large quantity of oil from the Cumberland Pipe Line Company, which is transported across the state of West Virginia and delivered to the Southern Pipe Line Company at the Pennsylvania state line for delivery through that company and its connecting carriers to the consignees at the seaboard. This oil is practically all produced in the state of Kentucky, there being a small quantity produced in the county of Cabell in the State of West Virginia. This production in Cabell county is, however, gathered by another company, and all of it thus received by the Eureka Company is delivered to it by the Cumberland Company at the Tug River terminus. This oil is known as Somerset-Cabell oil, and is different in grade and quality from the oil produced in West Virginia. The Eureka Company also receives at its Eureka connection with the Buckeye Pipe Line Company considerable quantities of oil for transportation from that point and delivery to the Southern Pipe Line Company at the Pennsylvania state line for transshipment to the seaboard. The oil received by it at Eureka is made up of two different grades, one known as Corning Oil, which is produced in the state of Ohio, and the other—a smaller quantity—of Pennsylvania grade oil. The Pennsylvania grade oil is the same in quality and grade as the oil pro-
1576 duced in West Virginia. The Corning oil, however, is of a lower grade. The complainant pipe line company also receives from the Southwest Pipe Line Company at the Pennsylvania state line large quantities of what is known as mid-continent oil for transportation from that point through its lines to another point on the Pennsylvania state line, for delivery to the Southern Pipe Line Company, for transshipment to the seaboard. This oil is also of a different quality and grade from that produced in West Virginia, and is produced in the states of Texas, Oklahoma, and other mid-continent territory. Of the oil produced in West Virginia and transported by the complainant pipe line company, a considerable quantity is delivered to refineries at Parkersburg and St. Marys. The remainder is ultimately delivered by the complainant pipe line company through its lines to the Southern Pipe Line Company at the Pennsylvania state line for transshipment to the refineries at the seaboard. Without going further into the details of the complainant Eureka Pipe Line Company's business at this time, it is apparent that it is engaged in intrastate commerce to a considerable extent, at

least to the extent of the oil delivered by it to the refineries, at Parkersburg and St. Marys, and it may be said that it is likewise engaged to a very considerable extent in interstate commerce, as to the volume of which, however, counsel for the respective parties do not agree.

The complainant United Fuel Gas Company is engaged, not only in the business of transporting natural gas within the state by means of pipe lines, but also of producing such gas and buying it from other producers, and selling it to its customers. Its production and purchase of gas is very substantial. A large quantity of gas thus produced and purchased is by it conveyed to numerous cities and towns in the southern part of the state of West Virginia, and sold to the inhabitants thereof. Still another portion is conveyed to the states of Kentucky and Ohio and sold by the complainant to its customers in those states. Another larger portion of it is conveyed to a point on the Ohio River near Ravenswood, where it is sold and de-
1577 livered to the Ohio Fuel Supply Company, by which company it is conveyed into the state of Ohio and there sold and delivered to the customers of that company. Another considerable quantity of gas is by it delivered from one of its lines at Ball's Gap in Cabell county, West Virginia, to the Columbia Gas and Electric Company, which is by that company sold partly within the State of West Virginia, and partly conveyed by it without the state, and sold to its customers in Ohio and Kentucky. It also delivers to the Hope Natural Gas Company and to the Pittsburg and West Virginia Gas Company, at a point in Gilmer county, large quantities of gas, that sold and delivered to the Hope Natural Gas Company being resold by it within the state to the extent of thirty-three per cent. thereof and the residue, sixty-seven per cent., without the state; and of that delivered to the Pittsburgh and West Virginia Gas Company, twelve per cent. thereof is sold within the state, and the residue thereof without the State. It will thus be seen that this company is likewise engaged to a very considerable extent in both intrastate and interstate commerce; in fact counsel concede this to be true, although they do not agree as to the extent of each class of such commerce.

The contention of the complainants is that the act under which it is proposed to collect the taxes sought to be enjoined in this case is an attemot upon the part of the State of West Virginia to charge a tax for the privilege of engaging in interstate commerce, while the defendants contend that the act properly construed does not lay any tax upon the privilege of engaging in interstate commerce, but is only intended to, and, upon a proper construction, does only impose such tax upon the transportation of oil and gas in intrastate commerce within the confines of the State of West Virginia, but contend that the amount of this tax is measured by the total amount of commerce carried on by the complainants of both classes within or through said state. The complainants insist that even though the act be construed as imposing a tax for the privilege of doing intra-
state commerce, the amount thereof to be measured by all of
1578 its business, both in intrastate and interstate commerce, it is invalid, inasmuch as it would impose a burden upon the interstate commerce carried on by it, as well as upon the intrastate commerce.

If the contention of the complainants is that this act is an attempt to impose a tax upon the privilege of carrying on interstate commerce within the state of West Virginia is correct, then undoubtedly it is invalid as being in violation of the commerce clause of the Constitution of the United States. If the act is to be construed as forbidding the complainants from engaging in their interstate business, unless they procure the license therein provided for, it cannot be sustained, and this construction, the complainants insist, is the only one consistent with the terms of the act. That a state cannot levy any tax upon interstate commerce, or charge any license for the privilege of engaging in such commerce within the state, is the uniform doctrine of this Court, as well as the Supreme Court of the United States. Pennywitt v. Blue, 73 W. Va. 718; Crutcher v. Kentucky, 141 U. S. 47; Robbins v. Shelby County Taxing District, 120 U. S. 489. The doctrine of these cases has been repeatedly asserted by the Supreme Court of the United States, and, indeed, is not questioned by counsel for the defendants here.

The question, therefore, which confronts us at the threshhold is, what is the proper construction of this act in this regard? It will be observed that the act is couched in general terms broad enough to include the business of transporting natural gas and petroleum oil in any class of commerce anywhere. In fact, to give to the language used the most extended application of which it is capable, it would include the transportation of these substances, not only in interstate and intrastate commerce within the State of West Virginia, but in both of such classes of commerce in any other state in the Union. Of course, the legislature did not use this language in this broad comprehensive sense. There are some rules of construction which must be kept in mind in determining the legislative intent. The presumption is that the legislature did not intend to violate either the Constitution of this state, or of the United States, and where lan-
1579 guage of a general nature is used which may be construed to embrace within its terms matters beyond the competence of the legislative authority, and also be given a narrower construction consistent with its terms which would confine it within the legislative power, the latter construction will be adopted in order that the legislative purpose may be accomplished, the presumption being, as before stated, that the legislature intended to use it in such narrow or limited sense rather than in the broad comprehensive sense which would make it include subjects beyond its power. Another rule which may be said to be a qualification of the one just stated is that there is a presumption that the legislative authority intended the act to have effect, and where it is susceptible of two meanings, one of which would make the act invalid, and the other valid, the latter will be adopted as the one intended by the legislature. These rules of construction are a part of the fundamental law of the land, and have been applied by the courts with practical unanimity. In fact, it may be said that they are practical rules of construction applicable to all classes of instruments, whether legislative acts, private contracts, wills or deeds, but their application to the construction of legislative acts is more pronounced, perhaps, than to matters of private con-

tract, largely because of the fact that those engaged in making the laws are more or less familiar with the constitutional limitations upon their powers, and are presumed to have acted with full knowledge of such limitations, and to have intended not to go beyond them. In the case of Underwood Typewriter Co. v. Piggott, 60 W. Va., 532, this Court applied the above rules of construction and saved the legislative act in that case from invalidity by restricting it in its application to matters within the legislative competence, although the language was broad enough to extend beyond this limit. We excerpt the following from the opinion of Judge Poffenbarger in that case at page 535, which aptly expresses the views we have upon this question: "In seeking the true interpretation of the statute in
1580 question, rules of statutory construction must be observed, one of which is that a statute will never be so construed as to make it conflict with any constitutional provision, if the terms used by the legislature are susceptible of a meaning, and reconcilable to a view, that are consistent with the organic law. That a certain construction or interpretation of a statute will make its operation and effect violative of a constitutional right, or put it under the ban of a constitutional inhibition, is an admonition to the court that the construction is wrong, if the statute is susceptible of a construction that will make it valid. Slack v. Jacob, 8 W. Va. 612; State v. Workman, 35 W. Va. 267; Bridge v. Kanawha Co., 41 W. Va. 658; Robey v. Sheppard, 42 W. Va. 286. This rule is founded upon two presumptions. One is that the legislature intended the statute to be operative and effective. This implies the other, that the legislature knows the limitations upon its power, imposed by the organic law." The same rules of construction were again applied by this Court in the case of Coal & Coke Ry Co. v. Conley, et al., 67 W. Va. 129, and the language used in the act was limited in its application so as to bring it within the constitutional limitation imposed upon the law-making body. Again in the case of Pennywitt v. Blue, 73 W. Va. 718, we had under consideration an act imposing a license upon merchandise brokers. It made no distinction between those brokers engaged in interstate commerce and those engaged in intrastate commerce, but imposed a license tax upon those engaged in the business in general terms. In that case we held that the presumption above referred to would limit the act in its application to those brokers engaged in intrastate commerce, holding that the general terms used in the act would be so far restrained as to avoid conflict between it and the federal Constitution, upon the presumption against intention to violate that instrument. This doctrine has been recognized by the United States Supreme Court in many cases, of which the following are but a few: St. Louis Southwestern Ry. Co. v. Arkansas, 235 U. S. 350; Pullman Co. v. Adams, 189 U. S. 420;
1581 United States v. Delaware & Hudson Co., 213 U. S. 366; Singer Sewing Machine Co. v. Bricknell, 233 U. S. 304.

The complainants, however, contend that the language of the act in question cannot be so limited. They insist that the language used expresses a clear intent to lay this tax on all of the business done by pipe line companies in the transportation of oil and gas

or without the state, or for the use within or without the state. Withguage used in the second section of the act imposing a tax upon such products transported by pipe lines for sale to consumers within or without the state, or for the use within or without the state. Without the aid of the attendant facts, this language would seem to indicate a purpose upon the part of the legislature to impose the tax upon all those transporting oil or gas within the state, regardless of its character, as interstate or intrastate commerce, but when we consider these terms and apply them to the conditions which are shown to exist, the sense in which the legislature used them may appear to be entirely consistent with an intention upon its part to apply the tax only to the intrastate business of the complainants. As an illustration, it is shown that a large part of the business of the complainant pipe line company consists of the transportation of oil from various wells within the State of West Virginia to the refineries located within the state, at which points it is converted into a product ready for use, and then transported without the state in interstate commerce. Again, it appears that a large part of the business of the pipe line company is the transportation of oil from the producing wells in the state to central points, where it is delivered into its trunk lines and shipped to points, some of which are within, and some of which are without the state. For this gathering process, the pipe line company charges a regular and separate charge, and the business is carried on generally before the oil is destined to any particular point, but while it is simply being gathered up and collected in such quantities as that the owners thereof may find a ready market for it, and then after it is so sold it is transported by the pipe line company through its trunk
1582 lines to the point of destination, in most instances without the State of West Virginia. A very similar condition affects a large part of the business of the gas company, as will be hereafter seen. We must presume that the legislature was familiar with these conditions, and if the language used in the act can reasonably be made to apply to them we will so apply it rather than to give it a construction which would render the act nugatory. This legislation was under consideration for a number of years before it was finally enacted, and the proposition that the state cannot impose a tax upon the busines of engaging in interstate commerce is of such universal cognizance that we will not assume that the legislature intended to violate this constitutional limitation where any other reasonable interpretation can be given to the language, and particularly is this true where the subject matter of the act had been under consideration for a considerable length of time. We, therefore, conclude that this tax, when the act is properly construed, is only upon the privilege of engaging in transporting oil or gas in intrastate commerce within the confines of the State of West Virginia, and that it does not extend to the privilege of engaging in interstate commerce within or without the state. The complainants, if they desire to do so, under our view of this act, might carry on their interstate business, regardless of it, and so long as they did not engage in intrastate business, the penalties prescribed by the act would not apply to them.

Counsel for the respondents, while acceding to the views above expressed, so far as defining the subject of taxation, insist that in ascertaining the amount of the tax they are entitled to take as a basis therefor all of the business done by the complainants, whether in interstate or intrastate commerce. Of course, it may be that particular language will be given different meanings or interpretations when used under different circumstances, or for the accomplishment of different purposes, but it is difficult for us to see why we should attribute to the language of this act a different meaning when applying it to the subject of the tax and the measure
1583 of the tax. The language to be construed is the same, and the legislature was treating of the same general subject, and it cannot well be assumed that they meant the language to mean one thing when defining the subject to be taxed, and the same language to mean an entirely different thing when defining the measure of the tax. Aside from this it may well be doubted whether the legislature has the power to adopt such a measure for the tax in this case. It will be noted that this tax is in addition to other taxation. It appears that the complainants have paid the taxes assessed against their property within the state; they have likewise paid a tax upon their corporate franchises levied by the state; and also an excise tax upon the profits arising from their business; and it is sought to collect this tax for the privilege of engaging in this particular kind of business in addition to the above taxes. If it can be said that the legislature has the power to tax the privilege of engaging in a particular kind of intrastate commerce in the state, and then measure that tax by the amount of interstate commerce done, as well as by the amount of intrastate commerce, it would accomplish by indirection what, by the uniform holdings, it could not accomplish directly. It could under the guise of taxing the privilege of doing intrastate commerce take a part of the interstate commerce. It seems to us that the reasoning which seeks to justify the adoption of the measure of the tax sought to be applied in this case is sophistical, and amounts to simply a confusion of terms, the result being exactly the same as if the tax had been laid upon the privilege of engaging in interstate commerce. The courts do not look at the form which may be adopted to accomplish a particular purpose, but where it appears that the necessary effect of the procedure contended for is to produce a result which necessarily imposes a burden beyond the power of the legislature, the form will be disregarded. We do not think the authorities relied upon by the respondents, that the total commerce carried on by the complainants may be used as the measure of the tax, sustain their view. They rely with a great deal of confidence upon the case of Maine
1584 v. Grand Trunk Ry. Co., 142 U. S. 217. And it may be said that that case appears to be authority for their proposition. It is, however, in apparent conflict with the case of Philadelphia & Southern Steamship Co. v. Pennsylvania, 122 U. S. 326. In the latter case the court held that a tax imposed by the state of Pennsylvania upon the gross receipts of a steamship company, when such receipts were derived from commerce between the states and

foreign countries, was unconstitutional and void. In the former it was held that a tax imposed by the state of Maine upon a railway company for the privilege of doing business within the state, measured by its total receipts from business done within and without the state in proportion to its total mileage in the state, as compared with the total mileage of the company, was valid. In the case of Galveston &c. Ry. Co. v. Texas, 210 U. S. 217, the court had under consideration a statute of the state of Texas imposing a tax upon the gross receipts of railroads, including receipts from intrastate as well as interstate business, and held the same invalid. In that case the doctrine laid down in the case of Philadelphia & Southern Steamship Co. v. Pennsylvania, above cited, was followed and that case distinguished from the Grand Trunk Ry. Case. The distinction marked by the court between the two cases is that in the case of Maine v. Grand Trunk Ry. Co., while the tax imposed was laid upon interstate as well as intrastate commerce, it was imposed in lieu of a property tax. The legislature undoubtedly had a right to impose a tax upon the property of the company located within the state, and the imposition of this tax by taking a part of its gross receipts would be sustained, unless it appeared that the same was grossly unfair or imposed an unjust and unreasonable burden upon the railroad company. Upon the same theory the tax upon a part of the gross receipts of an express company was justified in the case of United States Express Co. v. Minnesota, 223 U. S. 335. Recognizing these distinctions made by the court in those cases, they lose their force as pertinent authorities in this case for the very good reason that the tax sought to be imposed here is not one in lieu of *of* a property tax, or is not a method adopted by the legisla-
1585 ture for valuing the property for the purpose of taxation. This case is much like the case of Oklahoma v. Wells, Fargo & Co., 223 U. S. 298. In that case it was sought to impose a tax on the gross revenue of the express company, not as a means of valuing its property for the purpose of property taxation, but in addition to all other taxes, as is the case here, and the court held that under those circumstances the tax could not be sustained. The doctrine of this case was followed in the case of Looney v. Crane Company, 245 U. S. 178, which involved the right of the state of Texas to impose a privilege tax based upon the amount of commerce carried on, both intrastate and interstate; and also in the case of Crew Levick Co. v. Pennsylvania, 245 U. S. 292, in which latter case the case of Ficklen v. Shelby County Taxing District, 145 U. S. 1, which is much relied upon by the respondents, is commented upon and distinguished and made inapplicable to the case we have presented here. Reference to the cases we have cited will show that the Supreme Court of the United States has distinguished all of the cases relied upon by the respondents from such a case as is presented by this record, and justify the conclusion in those cases upon grounds which do not here exist. We are constrained to hold that if the interpretation placed upon this act by the respondents is the proper one it would be invalid, or would be no more than a direct tax levied upon the right to do business in interstate com-

merce. As before stated, however, we do not agree with this interpretation, and the fact that such an interpretation would render the act invalid is a very strong reason for giving it another interpretation if it can reasonably be done. Our conclusion is that the act, both as to the subject of the tax, and as to the measure of it, the language used for both purposes being the same, applies only to intrastate commerce carried on by the complainants.

The complainants insist that the act complained of is invalid for the reason that it denies to them the equal protection of the law guaranteed by the provisions of the fourteenth amendment to the Federal Constitution, because it does not require the privilege
1586 tax from those engaged in the business of transporting oil and gas through pipe lines under ten miles in length, or from those engaged in transporting it by means other than pipe lines, such as in tank cars by rail. The question presented by this contention is whether or not the classification made by the legislature for the purpose of the imposition of this tax is a justifiable one. It is uniformly held that notwithstanding, by the constitution of a state, taxes must be levied by equal and uniform laws, and that the equal protection of the laws is guaranteed by the fourteenth amendment of the Federal Constitution, a state in the exercise of its taxing power may classify the subjects of taxation within its limits, and so long as the classifications thus made have a reasonable basis for their existence, and the tax imposed upon each member of each class is uniform, the same does not violate such constitutional limitations. Pacific Express Co. v. Seibert, 142 U. S. 339; King v. Mullins, 171 U. S. 404; Citizens' Telephone Co. v. Fuller, 229 U. S. 322; Standard Oil Company v. Fredericksburg, 105 Va. 82; Sperry & Hutchinson v. Melton, 69 W. Va. 124. And as declared by the Supreme Court of the United States in Citizens' Telephone Co. v. Fuller, supra, the power to classify for the purpose of taxation is broader than such power of classification when exercised for other legislative purposes. It appears in this case that the exemption of pipe lines under ten miles in length is based upon the consideration that such lines are used largely by comparatively small producers, and are owned by them, and are for the purpose of gathering the oil together and conveying it to a branch of a regular pipe line company, and that such short lines are not used to any considerable extent in the regular business of transporting oil. It would seem that this would offer a reasonable basis for the classification thus made. In Railway Co. v. Conley, 67 W. Va. 129, an exemption of railroads under fifty miles in length, and of electric lines and street railways from the application of the two cent rate law was sustained, and this conclusion was approved by the Supreme Court of the United States in Chesapeake & Ohio Ry. Co. v. Conley, 230 U. S. 513. The
1587 ground for the classification of railroads into those over fifty miles in length, and those under fifty miles in length, it occurs to us has a less substantial basis than the classification made of pipe line carriers in this case. In the case of King v. Mullins, supra, the classification of lands into tracts containing less than one thousand acres, and those containing more than one thousand acres

was sustained as a proper classification, and in Pacific Express Company v. Seibert, supra, a division for the purpose of taxation of those engaged in the express business into those owning their own cars and equipment, and those renting their cars and equipment from railroads, was sustained as a legitimate one; and in Citizens' Telephone Company v. Fuller, supra, a classification of telephone lines for the purpose of taxation, making a distinction between the small lines of inconsiderable mileage, and the larger lines used in the general business, was sustained. These decisions and others which are cited in the opinions above referred to, we think, clearly sustain the power of the legislature to make the classification which it did make in this case, both as between those carriers engaged in the transportation of oil by pipe line and by rail or some other means, and those engaged in transporting it through lines over ten miles in length, and those engaged in the transportation through lines of less than ten miles in length. The contention made by the pipe line company that the act is confiscatory of its property is without merit. As we have construed the act, it does not appear that it will place any unreasonable burden upon the business in which this company is engaged, and if it should be ascertained that such is the case relief would no doubt be granted to it by proper application to the Public Service Commission for authority to increase its rates. The concern of the courts ordinarily is only as to the power of the legislature to impose the tax. The extent to which it may go is ordinarily a question for the legislature to determine, and so long as the tax imposed does not exceed the value of the privilege granted the courts will not ordinarily interfere to enjoin it upon the ground that it is unreasonable or confiscatory.

1588

The gas company further insists that the act is invalid upon the ground of uncertainty, it not providing that the measurement of the gas shall be made at a particular pressure, and that inasmuch as it transports gas under varying pressures the amount would be increased or decreased as the pressure under which the same was transported was increased or decreased. The act confers upon the State Tax Commissioner authority to make such regulations as may be necessary for its proper administration, and it may be said that if this suggested question presents any difficulty in that regard, it could be, or would be covered by a regulation of the State Tax Commissioner. We think, however, it is a sufficient answer to the objection that this gas, so far as it is purchased, is purchased by measurement, and is sold measured by the thousand cubic feet, and we have never heard, nor are we informed in the record, that the complainant gas company has ever had any difficulty in collecting from its customers because of uncertainty in the amount of gas delivered. If this basis of measurement can be applied by the company in a practical way in carrying on its business between it and its customers, it is a little difficult to understand why it is not certain enough as a measure for the collection of the tax imposed.

It follows from what we have said that the act properly construed is a valid exercise of the legislative power imposing a tax upon the privilege of carrying on the business of intrastate commerce in the

transportation of oil and gas, based upon the amount of such commerce.

This would dispose of the case were it not for the fact that there is a great diversity of opinion between counsel for the respective parties as to the character of a large part of the commerce handled by the complainants, counsel for the complainants contending that practically all of their business is interstate, while counsel for the respondents earnestly contend that practically the whole thereof is intrastate commerce, and subject to the tax in any event. This makes
1589 it necessary for us to consider, upon the facts presented, the extent to which the injunction granted by the court below will have to be modified, and makes necessary that we determine what part of the business done by each of the complainants is interstate, and what part intrastate, so that the injunction may be perpetuated as to that part which is not subject to the tax, and dissolved as to the residue.

The oil transported by the complainant pipe line company is classified into four grades, known as Somerset-Cabell, Mid-Continent, Corning, and Pennsylvania. All of the oil produced in West Virginia and transported by this complainant is of the Pennsylvania grade, except a small amount produced in Cabell county, which is delivered to the complainant pipe line company, together with the Somerset oil produced in Kentucky, by the the Cumberland Pipe Line Company at the Tug River terminus of the complainant's line. This oil is transported through the state from this terminus to the terminus of the company at the Pennsylvania state line, and it is insisted that the same constitutes interstate commerce. Counsel for the respondents contend, however, that it cannot be considered as interstate commerce, for the reason that when it is delivered into the state of West Virginia its destination is not yet determined and fixed, and that the oil is not really consigned to a point beyond the state of West Virginia until after or about the time it reaches Morgantown in the pipe line, and sometimes not until it is stored in the tanks at Morgantown; and further that it cannot be considered as interstate commerce, for the reason that while it is in the state of West Virginia it becomes mixed with other oil within the state, which mixture has the effect to change its character from interstate to intrastate commerce, if indeed it can be said to have had a character as interstate commerce. The first proposition is based upon the facts shown that when this oil produced in Kentucky is delivered to the Cumberland Pipe Line Company that company, because of lack of facilities, delivers it, or at least a substantial part of it, to the
1590 complainant pipe line company in advance of any consignments therefor, and the complainant pipe line company takes it into its pipe lines and tanks and holds it until such consignments are made, it being claimed that it is thus held in storage in the state of West Virginia for and on behalf of the Cumberland Pipe Line Company, and a charge made therefor. We do not see how this can affect the matter one way or the other. The tax is not laid upon the business of storing oil within the state, but upon the business of transporting it, and assuming that this oil is received in

storage by the Cumberland Pipe Line Company, and because of its lack of facilities turned over to the Eureka Pipe Line Company and held by it in storage, its transportation from the point of storage in Kentucky to the point of storage in West Virginia would be as much interstate commerce as if it had changed ownership in the meantime. The transportation is from the point of storage in the state of Kentucky to the point of storage in the state of West Virginia, wherever these respective points may be. The fact that the commodity transported may not have changed ownership during the movement, or that the movement was not for the purpose of effectuating a change of ownership, has nothing to do with fixing its character as interstate commerce. Then when the oil was finally consigned from the point of storage in West Virginia to its destination, which was at the seaboard, this movement was likewise interstate commerce. The complainant argues that the storage was only incidental to the transportation, and this may be true, but whether true or not we do not consider it at all material, for certain it is that whatever movement was made of this oil it was made in interstate commerce. If we treat it as a continuous movement from the point at which it was received by the Cumberland Pipe Line Company in Kentucky to its destination at the seaboard, it was interstate commerce. If we treat it as a broken movement from the state of Kentucky to a point in West Virginia, where the Eureka Pipe Line Company stored it and kept it for awhile, and then reshipped it to its destination, both of these movements were in interstate commerce. The second
1591 ground upon which it is urged that this Somerset Oil became intrastate commerce is that it became mixed with other oil in the state, and thus lost its character as interstate commerce. This argument is based upon the showing that the oil is moved through the pipe lines in columns, that is to say, when a sufficient quantity of oil is found on hand to justify it, the grade of oil which is then being transported in the pipe line is turned off and another grade turned in until the supply of this grade on hand is exhausted, when it is turned off, and another grade turned into the line following it. At each end of the column of oil thus formed it comes in contact with oil of another grade, and in this way, to some extent, becomes contaminated or polluted, and it is insisted that because of this its character as interstate commerce is in some way changed, and it becomes a part of the body of the property of the state. It seems to us that this argument is rather strained. This method of transporting oil by pipe lines is one in general use, and it is shown that it is not practicable, indeed not possible, to so transport it without to some extent contaminating the columns of oil of the different grades at the points of contact. This does not in any way, however, change the character of commerce to which it belongs. When the owner of the oil delivers it to the pipe line company he knows from the usage of the business that this will happen, and he agrees that he will accept the oil at the point of destination contaminated to the extent that the exigencies of the transportation may require. This contamination or pollution is simply incident to the movement or transportation of the oil. It is a result that comes therefrom. The

property is never received within the state for any other purpose but its transportation therethrough, and if as an incident of that transportation it should necessarily become contaminated with some other substance it cannot be said that its character would be changed. As an incident of transportation of cattle in interstate commerce, they must be fed at different points along the route, and it may be expected that their weight would be increased, or their substance
1592 changed from the food thus administered to them, but would it be contended for a moment that this would change their character as interstate commerce, and cause them to become a part of the body of the property of each state in which they were fed? The contamination of this oil by contact is just such an incident of transportation, and has no more effect upon the character of the oil as commerce than feeding the cattle has upon their character as to the class of commerce to which they belong. We are, therefore, of opinion that this Somerset oil transported through the state is not subject to the tax imposed by the act. There is likewise a considerable amount of what is known as Mid-Continent oil delivered to the Eureka Pipe Line Company by the Southwestern Pipe Line Company, transported for a short distance through the state, and again delivered to the Southern Pipe Line Company. This transportation of this oil by the Eureka company is simply a little link in its journey from the place of production in Texas, Oklahoma, and other mid-continent states, to its ultimate destination at the seaboard. Considerable quantities of Corning oil are likewise received by the Eureka Company from the Buckeye Pipe Line Company, and transported across the state, and delivered to the Southern Pipe Line Company at the Pennsylvania line. The same is true of considerable quantities of Pennsylvania oil produced in Ohio and delivered by the Buckeye Pipe Line Company to the Eureka Company, and by it delivered to the Southern Pipe Line Company for further transportation to its ultimate destination. The oil thus transported, it is contended by the respondents became intrastate commerce, and subject to the tax, upon the theory of contamination above referred to. What we have said above upon this question sufficiently answers the contention, and indicates the conclusion that this is all interstate commerce, and not subject to the tax.

Of the oil produced in West Virginia and transported by the Eureka Company, a considerable portion thereof is delivered to the refineries located within the state. This, it is admitted, is
1593 intrastate commerce. There is still another larger portion, amounting to several million barrels a year, which ultimately finds its way outside of the state. The respondents contend that this is intrastate commerce, while the complainants contend that it is interstate commerce. The contention of the respondents is based upon the showing that this oil is produced in various parts of the state of West Virginia, is delivered to the numerous branch lines of the Eureka Company, and gathered together by it at central points, from which it is ultimately shipped to its destination, some of it within and some of it without the state. At the time the oil is delivered into the pipe lines, the Eureka Company gives to the owner a credit cer-

tificate showing that it holds for him a certain number of barrels of oil, and the oil is then transported through the small feeding lines into which it is delivered until it ultimately reaches the trunk lines. Of course, movement of oil through the trunk lines is continuous, and the agreement of the owner of the oil upon delivery is not that he shall receive back the same oil that he has delivered, but the same amount of oil of a similar grade. We think this agreement with the owner, as well as the statute of this state, which recognizes the right of pipe line companies to deliver a like amount of oil of the same grade in lieu of that received, is the equivalent in law of the delivery of the very oil received. The parties by their contract make it so, and the exigencies of the business, as well as the law of the land, justify the contract. A large part of these credit certificates are bought up by the larger dealers in oil notably the South Penn Oil Company, and the Carter Oil Company, in which instance the oil is delivered by the Eureka Company through its pipe line at such point as the owner of the credit certificates may direct. For the service rendered by it in gathering the oil together, and conveying it to its trunk lines during the period involved in this case it charged and received twenty cents per barrel, known as a gathering charge, and fixed by the Public Service Commission of West Virginia.

1594 This charge has since been increased to thirty cents a barrel.

For the transportation of the oil through its main pipe lines, after so gathering it, to the point of destination, it charged a rate fixed by the Interstate Commerce Commission, depending upon the point of destination, and this rate was divided between it and the connecting carrier upon an approved basis. The pipe line company contends that this oil so far as it ultimately went without the state of West Virginia was interstate commerce from the very minute that it was delivered to it, while the respondents contend that it did not become interstate commerce until it was definitely determined that its destination was without the state. It cannot be denied that when the oil is delivered to the pipe line company it has no fixed destination. It is known that beyond all reasonable probability a large part of it ultimately will go outside of the state, and a considerable part of it be used within the state at local refineries, but as to what particular producer will sell his oil to the local refineries, and as to which particular producer will ship his oil without the state, is not determined until after the oil is gathered, and the gathering charge above referred to has accrued to the pipe line company. Under this state of facts, we think the process of gathering the oil, for which the charge of twenty cents was formerly made, and for which thirty cents is now charged, is engaging in the business of intrastate commerce. The situation here is very similar to that in Arkadelphia Co. v. St. Louis S. W. Ry. Co., 249, U. S. 134. There it was insisted that rough *l*imber taken from the woods to milling points in the state, where it remained for several months in the process of manufacture, and was then shipped to points beyond the state was interstate commerce, while being shipped to the mills in its rough state, because it was known in advance that it would ultimately enter into such commerce. The contention was denied upon the ground that

while experience and market conditions justified the belief that it would ultimately go into interstate commerce, it did not in fact
1595 become such commerce until its destination to a point without the state was identified. Another case very much in point, and throwing much light upon the question involved here, is that of McCluskey v. Ry. Co., 243 U. S. 36. We conclude that the business carried on by the defendant pipe line company in gathering the oil produced in West Virginia and transporting it to the central points for the purpose of shipment, is intrastate business, and subject to the tax referred to, and to the extent that the respondents are enjoined from levying a tax upon such business, the decree rendered by the lower court will be reversed.

Coming to a consideration of the business of the complainant gas company, we find that a large amount of the gas transported by it is sold and delivered to its customers within the state of West Virginia, which is admittedly intrastate commerce. We also find that a considerable part thereof is transported by it directly through its own lines to the states of Ohio and Kentucky, and there by it delivered to its customers, which is unquestionably interstate commerce, and not subject to the tax. The remainder of the gas transported by it is delivered, a considerable part thereof to the Columbia Gas & Electric Company at a point in Cabell county in this state; another considerable portion delivered to the Ohio Fuel Supply Company at Ravenswood, and the remainder delivered to the Hope Natural Gas Company and the Pittsburgh and West Virginia Gas Company at a point in Braxton county. We will first consider that portion delivered to the Ohio Fuel Supply Company. It appears that the complainant entered into a contract several years ago with the Ohio Fuel Supply Company to deliver to it a certain quantity of gas per month, or per year, over a certain period of years, and that pursuant to that contract it has been delivering to that company at a point on the Ohio River the quantity of gas called for, which is transported across the river, and all sold by the Ohio Fuel Supply Company to its patrons in the state of Ohio. The apparent difficulty in determining the class to which this commerce belongs results, we believe, from the fact that the transportation companies in each instance is also the owner of the subject of commerce. If we consider the
1596 subject of this commerce as owned by parties different from the transportation companies, the question is easy of solution. Suppose that A. B., the owner of the gas in West Virginia, sells to C. D., the consumer of the gas in the state of Ohio, the quantity of gas provided in this case, and that this gas intended and destined for delivery to C. D. is delivered by A. B. to the United Fuel Gas Company as a transportation company for delivery to C. D. through the connecting carrier, the Ohio Fuel Supply Company. It will thus be seen that the United Fuel Gas Company and the Ohio Fuel Supply Company in their capacity as carriers form a single connecting link between the point of production of the gas to the point to which it is destined for consumption. They are in no different position than connecting carriers by rail. The fact that the delivery is made

from the one to the other at the state line does not affect the character of the commerce. When it was delivered to the first carrier it was intended and was destined to a point in another state, and that fact gave to it its character as interstate commerce. Whatever may be said as to the duty or obligation of the United Fuel Gas Company as a public service corporation, or of the power of the Public Service Commission to require service from it to its patrons in West Virginia, it cannot be denied that to the extent that it delivers gas to the Ohio Fuel Supply Company for consumption in Ohio, and which is destined to Ohio points at the time it is received by it, it is engaged in interstate commerce, and in such cases is not subject to the tax imposed by this act. The gas delivered by it to the other three companies above referred to is on quite a different basis. For the year under consideration, of the gas delivered to one of them, 33 per cent, was sold within the state, and 67 per cent. sold without; of that delivered to another, 12 per cent. was sold within the state, and 88 per cent. sold without; and of that delivered to the other, 99 per cent. was sold without the state, and only 1 per cent. within the state. If we can visualize this situation from the standpoint of the owner of the commodity being different
1597 from the company transporting it, we believe the question will be simplified. This gas was all purchased by the several companies and delivered under several contracts which extended over a period of years. At the time it was put in course of transportation it had no fixed destination other than the point of delivery to the purchasing company, that is to say, it was not known by the owner of the gas where it would ultimately go, as in the case of the gas delivered to the Ohio Fuel Supply Company. It is true it appears that a large part of it was ultimately conveyed without the state, and it was known at the time it was purchased that a large part would be so sold without the state, but as to what part neither part- to the contract at the time knew; and while the percentages given above apply to the gas delivered for the year under consideration, there is no assurance that the same percentages will apply to any succeeding year, except the probability that the business of these companies will likely be carried on in substantially the same manner. When the owner of the gas, considering the owner as separate from the transportation company, delivered it to the transportation company, no particular part of it, nor any particular percentage of the total, was destined to any point without the state, so that it cannot be said, under the decisions we have above cited in discussing a similar question in its application to the pipe line company, that any part of this gas was interstate commerce during the time it was being transported by the United Fuel Gas Company.

What we have said results in a reversal of the decrees of the circuit court to the extent that the defendants are enjoined from collecting the tax upon the intrastate business of the complainants as the same is above defined, and in all other respects said decrees will be affirmed.

1598 At another day, to-wit, on the 30th day of November, 1920, the following order was made and entered:

Absent: Judges Williams and Lynch.

It is ordered that the operation of the final judgments or decrees entered at this term in appeal cases, not heretofore suspended, since the 30th day of October, 1920, be and the same hereby are suspended for a period of thirty days from the dates said judgments or decrees were entered, and that in each of the causes in which final judgments and decrees were entered in which a petition for rehearing is filed in the office of the Clerk of this Court within said thirty days, the operation of the final judgment or decree in such cause is suspended until the further order of this Court, but in all cases in which a petition for rehearing is not so filed within said thirty days, the judgments or decrees of this Court shall become final and be severally certified as hereinbefore directed.

And it is further ordered that the Clerk may certify the mandate to the lower court in any case decided at this term since the 30th day of October, 1920, when the parties jointly request in writing that the mandate may be certified.

1599 At another day, to-wit, on the 12th day of January, 1920, the following order was made and entered:

* * * * * * *

4196.

EUREKA PIPE LINE COMPANY

vs.

WALTER S. HALLANAN et al.

From Kanawha County.

* * * * * * *

The Court, having maturely considered the several petitions for re-argument and rehearing filed in the four foregoing causes, is of opinion to and hereby doth refuse the prayer of said petitions, and doth order that the final judgments or decrees heretofore entered in said causes at a former term of this Court be made absolute and be severally certified as heretofore directed.

The petition for re-argument and rehearing filed in said cause in the office of the Clerk of said Court on the 23rd day of December, 1920, is in the words and figures following:

1600 Filed Dec. 23, 1920. Wm. B. Mathews, Clerk of the Supreme Court of Appeals.

In the Supreme Court of Appeals of West Virginia.

No. 4196.

EUREKA PIPE LINE COMPANY, Plaintiff below, Appellee,

vs.

WALTER S. HALLANAN, State Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Defendants below, Appellants.

From the Circuit Court of Kanawha County.

Petition for Rehearing and Argument in Support Thereof Filed by Appellee.

To the Honorable the Judges of the Supreme Court of Appeals of West Virginia:

The undersigned petitioner, Eureka Pipe Line Company, Plaintiff below and Appellee, respectfully represents that on the 26th day of November, 1920, an opinion was rendered by this Honor-
1601 able Court and a decree entered thereon, affirming in part and reversing in part the decree of the Circuit Court of Kanawha County, West Virginia, entered by that Court in the above entitled suit on the 8th day ot September, 1920, and pending in this Court on an appeal from said decree, which decree of this Court also directed that the Appellee pay to the Appellants their costs about the prosecution of their said appeal in said Supreme Court of Appeals.

Your petitioner is advised that, in this disposition of said appeal, in so far as the decree of this Court reversed the decree of the said Circuit Court, grave and prejudicial errors were committed by this Court, and that petitioner's interests most urgently require a rehearing of said appeal.

Petitioner is advised, in so far as the decree of this Court reversed the said decree of the said Circuit Court, that erroneous principles of law have been applied by this Court to the facts appearing on the record of this cause, and that certain principles of law applicable to such facts, on which Appellee relies to support its rights, have been overlooked by the opinion of this Court, on which its said decree rests, and that the application of correct and sound principles of law to said facts require that this Court affirm in all respects said decree of the Circuit Court of Kanawha County so as aforesaid appealed from.

Your petitioner, Eureka Pipe Line Company, therefore respectfully prays that in so far as said decree of this Court reverses said decree of the said Circuit Court, it be set aside and to that
1602 extent said cause be reheard, and that leave be given to this petitioner to have the same reargued to that extent on all the

grounds heretofore assigned and argued in Appellee's briefs heretofore filed herein and also for the following reasons, which are respectfully submitted:

First. That this Court erred in deciding that

"Chapter 5 of the Acts of the Legislature, Extraordinary Session, 1919, imposing a tax upon the business of engaging in the transportation of oil and gas by pipe lines, properly construed, imposes such tax only on those engaged in the transportation of such commodities in intrastate commerce, measured by the amount of such commerce."

The Plaintiff-Appellee is a common carrier under the laws of the State of West Virginia and of the United States, and is not free under those laws, to discontinue its intrastate business of transporting oil within said State and thereafter to continue to conduct solely the interstate commerce in which it is engaged. Therefore the tax in question is required to be paid as a condition precedent of your petitioner remaining to engage in interstate commerce, and is therefore invalid.

Second. That this Court erred in deciding that

"commodities in transit cannot be said to be interstate commerce until it is definitely determined that they are destined to points without the State, even though past experience and the course of business in which the owner of such commodity is engaged may justify the assumption that a large part thereof will ultimately be transported beyond the borders of the State."

1603 Third. That this Court erred in deciding that

"a pipe line company doing business in this State which receives the oil produced at numerous wells and transports the same to its main pipe lines or tanks within the State, and makes a definite charge for such service, is engaged in intrastate commerce, as to the oil so transported, where it appears that at the time such oil was so received and transported to its main lines or tanks by it, it was not definitely determined that the same was destined to points without the State, even though past experience may indicate and justify the belief that a large part of the same will ultimately be shipped without the State in interstate commerce."

Fourth. That this Court erred in making the following finding of fact to wit:

"This oil is produced in various parts of the State of West Virginia, is delivered to the numerous branch lines of the Eureka Company, and gathered together by it at central points, from which it is ultimately shipped to its destination, some of it within and some of it without the State"

and also in making the following finding of fact of like tenor, to wit:

"It appears that a large part of the business of the pipe line company is the transportation of oil from the producing wells in the State to central points, where it is delivered into its trunk pipe lines and shipped to points, some of which are within, and some of which are without the State. For this gathering process, the pipe line company charges a regular and separate charge, and the business is carried on generally before the oil is destined to any particular
1604 point, but while it is simply being gathered up and collected in such quantities as that the owners thereof may find a ready market for it, and then after it is so sold it is transported by the pipe line company through its trunk lines to the point of destination, in most instances without the State of West Virginia."

Fifth. That this Court erred in finding as a fact that

"A large port of these credit certificates are bought up by larger dealers in oil, notably * * * the Carter Oil Company."

Sixth. That this Court erred in making the following finding of fact:

"It cannot be denied that when the oil is delivered to the pipe line company it has no fixed destination. It is known that beyond all reasonable probability a large part of it ultimately will go outside of the State, and a considerable part of it be used within the State at local refineries, but as to what particular producer will sell his oil to the local refineries, and as to which particular producer will ship his oil without the State, is not determined until after the oil is gathered, and the gathering charge above referred to has accrued to the pipe line company."

Seventh. That this Court (referring to the finding of fact last above assigned as an error) erred in the following conclusion of law:

"Under this State of facts, we think the process of gathering the oil, for which the charge of twenty cents was formerly made, and for which thirty cents is now charged, is engaging in the business of intrastate commerce."

1605 Eighth. That this Court erred in the following conclusion of law and decision, to wit:

"We conclude that the business carried on by the defendant pipe line company in gathering the oil produced in West Virginia and transporting it to the central points for the purpose of shipment, is intrastate business, and subject to the tax referred to, and to the extent that the respondents are enjoined from levying a tax upon such business, the decree rendered by the lower Court will be reversed."

Argument in Support of Reasons for a Re-hearing.

I.

The first reason is explained above.

We shall discuss together the second and third reasons assigned.

The evidence in the case shows beyond question that the Pennsylvania Grade Oil gathered by the Appellee in West Virginia, during the twelve months ending June 30, 1919, was started immediately on its journey and moved continuously, except for the delays incident to transportation, until it crossed the Pennsylvania State Line, excepting, of course, such parts of that oil as were delivered to refineries in West Virginia. These refineries were only three in number and the oil delivered to them can readily be segregated in such a way as, from a legal standpoint, not to affect the course of the main body of the oil.

1. The first of these refineries is the Elk Refinery situated a few miles Northeast of Charleston (Min., p. 74). The testimony
1606 is that the oil delivered to this refinery was produced in the old Blue Creek field in Kanawha County; that it went through an individual pipe to that refinery from the Mill Creek Station; and that no part of the crude got into the Appellee's main system (Kenney, Min., p. 74). In other words, this portion of oil was thrown off from the stream of oil which started in the Blue Creek field, and the amount so diverted being shown in the record (Plff's Ex. 4), the delivery to that refinery ought not, we submit, to affect the general argument.

The second refinery is St. Mary's Refinery, the deliveries to which were made from oil gathered in the immediate vicinity of Eureka, in addition to a small amount received from Ohio through the Buckeye Pipe Line Company (Kenney, Min., p. 82-83). The total amount of these deliveries is in evidence (Plff. Ex. 4). Clearly no part of this oil affected the course of the general stream of oil.

The third refinery is that at Parkersburg, and the testimony is that all the oil delivered to it was so delivered through a single pipe running from Elm Run Station to Parkersburg. The amount so delivered being proved in the record, it can be segregated and does not affect the course of the main body of the Pennsylvania Grade Oil gathered in West Virginia, and ought not, we submit, to affect the Court's judgment as to the character of the commerce of which the main stream formed a part.

In Ohio R. R. Comm. v. Worthington, 225 U. S., 101, coal was diverted en route to the port of shipment and sold within the
1607 State, and apparently it was not known at the mines what coal would be so diverted. Yet this fact was not held to affect the Court's conclusion that all the coal actually shipped from the port was in interstate commerce. Thus, at page 106-7, Mr. Justice Day says, quoting from the findings of the Circuit Court (italics ours):

"It appears that all the coal shipped at the lake-cargo rate remains on the cars of the complainant until unloaded into a vessel *unless it should be diverted en route and devoted to some other purpose*, but in that case the lake-cargo rate does not apply. *For instance, if it should be diverted to commercial use at Huron*, the rate on commercial coal, which is $1.00 a ton, would govern."

Again at page 108:

"It is true, as argued by the learned counsel for the Commission, that this coal may be accumulated in large quantities at Huron, and only taken out of the accumulated lots from time to time, when it is to be put upon vessels and shipped out of the State, but it must always be remembered *that this seventy cent rate applies solely to such coal as is in fact placed upon vessels for carriage to beyond the State points.* * * * The situation then comes to this, that the rate put in force is applicable only to coal which is to be carried from the mine in Ohio to the lake, there placed upon vessels and thence carried to upper lake ports beyond the State. By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such."

In both the cases of Public Utilities Commission v. Landon,
1608 249 U. S., 236, 242 Fed., 658, and Pennsylvania Gas Co. v. Public Service Commission, 252 U. S., 28, the character of the commerce in natural gas was held to be interstate under circumstances remarkably similar to the transactions now under discussion. In the Landon case the natural gas in question was being produced in the States of Kansas and Oklahoma and transported across those States for delivery to distribution companies supplying cities in both Kansas and Missouri. Of course, no particular part of the gas produced in Kansas was consigned to points outside the State, but *the communities along the line were supplied from the common source and the remainder transported to Missouri.* In the Pennsylvania Gas Company case the gas was all produced in the State of Pennsylvania, and a pipe line operated from the point of production across the boundary line to certain localities in the State of New York. *various communities in Pennsylvania being supplied along the route of the line and the remainder of the common supply transported to cities in the State of New York.* In both these cases the Supreme Court concluded that as to such part of the gas as crossed the State boundary line for consumption, the transportation was interstate commerce, notwithstanding the fact that certain quantities were drawn off from the common supply in each case and consigned in the State of its origin.

2. As to the main body of Pennsylvania Grade Oil gathered in West Virginia, aggregating some five million barrels, the testimony is overwhelming that there was no stoppage at any point, except such
stoppages as were incidental to transportation. This was
1609 repeatedly testified to by different witnesses of Appellee's, not merely on direct examination but also on cross-examination.

On cross-examination, Mr. Kenny (Min., pp. 239-40) testified as follows (italics ours):

"By Mr. Avis:

Q. Is that true all along your line, that when oil is delivered to you in quantities unconsigned, you keep a sufficient quantity on hand at the nearest tanks for delivery or to meet the orders of the owner when he does consign it?

A. No, sir, *we move the oil along in a continuous stream* and do not particularly hold it at any point for any person or corporation. The Eureka Pipe Line Company has at all times in its pipes and tanks, moving along, sufficient stock of any grade to cover its obligations.

Q. Then the storage that you refer to, to meet the orders of the owners who deliver to you unconsigned, is both in your tanks and in your lines, is it not?

A. The stocks we have are in our pipes and in our tanks, moving along.

Q. And you keep no particular quantity at any one place to meet the orders of the owners nearest to that place?

A. We do not. * * *

Q. The oil that is produced north of Elm Run of producers or owners who deliver to you for transportation, unconsigned, is now held or stored until it is consigned?

A. *That oil is not held. It moves along through our pipes with the stream of that particular grade of oil,* and is not held in our pipes or tanks.

Q. Then you expect if the owner should consign that oil to any point other than a point that would have to go through the Morgantown Station, you would have to draw oil from some other place on your line to meet his order, would you not?

1610 A. We would deliver an equal amount of the same grade and quality of oil at any of the terminals on our line that he might so designate."

Mr. Swisher, one of Appellee's witnesses, testified (Min., 524-5) as follows (italics ours):

"Q. When you receive oil and you enter a credit on your production books, what becomes of the physical oil, the actual oil?

A. *The physical actual oil moves on in the usual channel or stream towards—well, it always moves forward.*

Q. Unless it has been delivered within the State of West Virginia, where does it move to?

A. It moves outside the State.

Q. In other words, the actual physical oil does not stop on account of any of this matter of credit and debit entries or transfer from a production account to the general oil account?

A. No, sir.

Q. *Actual oil is in the stream which is run through the State of*

West Virginia and out into another State unless it has been delivered to refineries within the State?
A. *Yes, sir.*"

Again, Mr. Swisher testified on cross-examination, referring to oil moving from Bula and Core (Min., pp. 626-627) (italics ours):

"By Mr. Avis:

Q. Well, does not this oil go into Morgantown, that comes from these places?
A. Yes, sir.
Q. Do you not hold it there and——
A. *That oil is moving all the time,* of course.
Q. Well, but it is placed in tanks at Morgantown, is it not?
A. And *is moved out almost immediately, on tenders, going through constantly.*"

1611 In the same connection (Min., 628-9) Mr. Swisher repeatedly said that the oil was not held, but was moving all the time.

Again, Mr. Swisher testified on cross-examination (Min., pp. 638-9) (italics ours):

"By Mr. Avis:

Q. In your direct testimony you explained how, when you received oil from the original producer, oil was handled by your company. Do I understand from what you stated in that respect that if I were a producer in Kanawha County, West Virginia, and should deliver to you unconsigned 500 barrels of oil, that you would start that oil to move forward without any order from me?
A. *It would move right in the regular stream along with the other oil.*
Q. And it might possibly go out of the State before I consigned it, might it not?
A. Yes, sir.
Q. And it would probably do so?
A. It would probably do so, that particular oil.
Q. In other words, if I should deliver to you 500 barrels of oil in Kanawha County, West Virginia, before I consigned it that particular oil might have gone out of the State, might it not?
A. Yes, sir."

Mr. Swisher again testified, under cross-examination (Min., p. 680) (italics ours):

"By Mr. Avis:

Q. Suppose at the end of the year you had more oil than the storage capacity of your pipes and tanks, some of which was the oil that you received for evaporation and waste, what would you do with that oil?

A. I don't know, we never had any such a case as that.
Q. You never have had any such case of that kind?
A. No.
1612 Q. *That is because you are moving the oil all the time?*
A. *We are moving the oil all the time, yes, sir.*"

The foregoing extracts all refer to Pennsylvania Grade oil gathered in West Virginia. There is other testimony to the like effect.

3. As to Morgantown, the testimony is quite conclusive that the Pennsylvania Grade oil did not make any stop there for any reason whatever; for the pipes leading out of Morgantown through which Pennsylvania Grade oil was pumped, could not, when worked to their utmost capacity, move the oil any faster. Thus Mr. Kenney (Min., p. 112) testified as follows:

"Q. During this period we are speaking of, the twelve months ending June 30, 1919, for how much of the time were the two pipes in System No. 1 employed for transporting Pennsylvania crude?
A. Almost continuously.
Q. When so employed were they wholly full or partly full, or what?
A. We were running full head on that system.
Q. Could you have moved the Pennsylvania crude out of the tanks during that time any more rapidly than you did, in transporting it up to the State line?
A. No, sir, we could not.
Q. Why not?
A. Because of being limited to the capacity of No. 1 System."

And he further testified (Kenney, Min. p. 168) that during the twelve months in question the tanks at Morgantown were kept pumped down low.

4. In the light of this testimony, it is, we respectively submit, established that the actual physical oil in question, excepting as
1613 to the amounts delivered to the three refineries, moved continuously from the moment of its receipt by the Eureka Pipe Line Company, until it crossed the State line. So far as the Eureka Pipe Line Company was concerned, this oil was destined to points without the State from the moment of its receipt, but if, as we suppose, the language of the ninth and eleventh syllabi means that the oil must be "destined to points without the State," by those who deliver it to the carrier, or their successors in interest, then, we submit that those syllabi do not correctly state the law. In support of this, we point to the fundamental principle that the mere transportation of commodities across a State line, especially when continued through a considerable period, is interstate commerce without anything more.

In the Lottery Case, 188 U. S., 321 at page 345, Mr. Justice Harlan said (italics ours):

"What is the import of the word 'commerce' as used in the Constitution? It is not defined by that instrument. *Undoubtedly, the carrying from one State to another by independent carriers of things or commodities that are ordinary subjects of traffic, and which have in themselves a recognized value in money, constitutes interstate commerce.* But does not commerce among the several States include something more? Does not the carrying from one State to another, by independent carriers, of lottery tickets that entitled the holder to the payment of a certain amount of money therein specified also constitute commerce among the States?"

This clear expression of the principle here contended for is amply supported by many cases in the same Court, decided both be-
1614 fore and after the Lottery Case.

In the case of The Daniel Ball, 10 Wallace 557, at page 565, Mr. Justice Field said (italics ours):

* * * *"Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.* The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State, and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress."

In the case of the State Freight Tax, 15 Wallace 232, at page 275, Mr. Justice Strong said (italics ours):

"Beyond all question the transportation of freight, or of the subjects of commerce, for the purpose of exchange or sale, is a constituent of commerce itself. This has never been doubted, and probably *the transportation of articles of trade from one State to another was the prominent idea in the minds of the framers of the Constitution,* when to Congress was committed the power to regulate commerce among the several States."

In Welton v. State of Missouri, 91 U. S., 275, at page 280, Mr. Justice Field said:

"Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citizens or subjects
1615 of other countries, and between the citizens of different States."

In International Textbook Co. v. Pigg, 217 U. S., 91 at page 107, the rule is laid down by Mr. Justice Harlan that:

"Importation into one State from another is the indispensable element, the test, of interstate commerce."

He says, quoting from Judge Sanborn, in the Circuit Court of Appeals, for the Eighth Circuit (italics ours):

"It was said in the Circuit Court of Appeals for the Eighth Circuit, speaking by Judge Sanborn, in Butler Bros. Shoe Co. v. United States Rubber Co., 156 Fed. Rep., 1, 17, that 'all interstate commerce is not sales of goods. *Importation into one State from another is the indispensable element, the test, of interstate commerce;* and every negotiation, contract, trade, and dealing between citizens of different States, which contemplates and causes such importation, whether it be of goods, persons, or information is a transaction of interstate commerce."

In Public Utilities Comm. v. Landon, 249 U. S., 236, at page 245, Mr. Justice McReynolds said:

"Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

Nor must it be forgotten that the practice of transporting the greater part of the Pennsylvania Grade oil gathered in West Virginia in the manner shown by the extracts of testimony given above
1616 has been the course of business for many years. Mr. Towl, President of the Eureka Pipe Line Company, testified that for years all but from six to fourteen per cent. of such oil has been so transported. (Min., p. 1426.) That this is an important element in determining the status of the oil so moved is held in many cases. We refer only to the much quoted decision in Swift and Company v. United States, 196 U. S., 375, where, at pages 398-9 Mr. Justice Holmes says:

* * * "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the exception that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another State from that of the seller and of the cattle."

We also respectfully submit that the cases cited in the opinion of this Court in support of its conclusion that all the business carried on by the Eureka Pipe Line Company in gathering oil produced in West Virginia and transporting it is intrastate business are not applicable to the facts in this record, and do not support that conclusion.

In McCluskey v. Marysville & Northern Ry. Co., 243 U. S., 36,
1617 the lumber was carried to tidewater by the shippers' own railroad, and after part of it had been sold, the rest was towed by the shipper to the mills. No part of the timber was ever deliv-

ered to a carrier until after it had been manufactured into lumber. That this is a correct interpretation is shown by the following language from the findings of the Court below, as given in the opinion of Mr. Chief Justice White, at page 39, where he said (italics ours):

"In the case at bar there was no initial shipment of the goods. The transportation of the poles from the forest in which they were cut to tidewater, where they were sold, was not a shipment. There was no contract of carriage; there was no bill of lading; there was no consignor or consignee. *The goods were not committed to a carrier. The defendant Mill Company simply carried over its own road, on its own cars, its own goods to a market where it sold and delivered them.* It had no concern with the subsequent disposition of them. It was under no obligation to deliver them to another carrier, and no other carrier was under obligation to receive them or carry them further. The selling of the poles after the first sale by the Mill Company, or whether they were going outside of the State, depended upon chance or the exigencies of trade. The movement of the poles did not become interstate commerce until by the act of the purchasers thereof the poles were started on their way to their destination in another State or Country. The beginning of the transit which constitutes interstate commerce 'is defined in Coe v. Errol, to be the point of time that an article is committed to a carrier for transportation to the State of its destination, or started on its ultimate passage.' General Oil Co. v. Crain, 209 U. S., 211, 229."

1618 The distinction here made is one which runs through all the leading cases, many of which were cited and discussed in the Appellee's Brief on the argument of this case. The principle of all these cases, it is believed, is that at least when the goods are placed in the custody of the carrier and remain in such custody until after the goods have crossed the State line, interstate commerce is established. The citation by the Court of the two cases of Coe v. Errol and General Oil Co. v. Crain, once more emphasizes this distinction.

At an earlier point the opinion reaffirms the principal cases relied upon by the Appellee in support of its argument that the transportation as held in the record was interstate commerce. This decision therefore clearly does not fit the facts in the instant case; for, as shown above, the oil was in the possession of the carrier from the moment it left the producers' well, and never left the carrier's possession until it crossed the State line: nor was there any delay other than that incident to transportation. The oil went through the State, including Morgantown and the other principal stations, in a stream which was substantially continuous, and certainly as continuous as the capacity of the Appellee's system rendered it possible to make it.

Nor does the case of Arkadelphia Co. v. St. Louis, S. W. Ry. Co., 249 U. S., 134, fit the facts in the instant case, we submit, any more closely. The distinctions drawn by the Court in the Arkadelphia case are set forth on pages 150 and 151. What was shipped in the first instance was "rough material." When this rough ma-
1619 terial left the woods, a bill of lading was issued from the woods to the mill, upon reaching which the material passed

out of the custody of the carrier and was manufactured into various articles. These were then retained until dried, and the process of manufacturing and drying occupied about five months. When the rough material was first shipped, the mills did not know to whom they would sell the finished products or to what points it would be shipped. Mr. Justice Pitney, at page 151, says further (italics ours):

"Upon the facts as stated, it is our opinion that the District Court erred in treating the movement of the rough lumber from the woods to the milling point as interstate commerce. It is not merely that there was no continuous movement from the forest to the points without the State, but that when the rough material left the woods it was not intended that it should be transported out of the State, or elsewhere beyond the mill, until *it had been subjected to a manufacturing process that materially changed its character, utility, and value. The raw material came to rest at the mill, and after the product was manufactured it remained stored there for an indefinite period*—manufacture and storage occupying five months on the average—for the purpose of finding a market. Where it would eventually be sold no one knew. And the fact that previous experience indicated that 95 per cent. of it must be marketed outside of the State, so that this entered into the purpose of the parties when shipping the rough material to the mill, did not alter the character of the latter movement. The question is too well settled by previous decisions to require discussion. Coe v. Errol, 116 U. S., 517, 525; Bacon v. Illinois, 227 U. S., 504, 515-516; McCluskey v. Marysville & Northern Ry. Co., 243 U. S., 36."

1620

Note the italicised words.

Note also the citation of Bacon v. Illinois, 227 U. S., 504, as authority. In Bacon v. Illinois, the grain, which was the subject of transportation, was removed from the custody of the carrier and placed in a private elevator, and it is upon this point precisely that Mr. Justice Hughes, in his opinion in that case, held that the interstate journey had been broken. We submit that there is nothing in the facts of the instant case corresponding to the situation shown in the Arkadelphia case. It is again significant that the Court refers to and approves the cases such as Ohio R. R. Comm. v. Worthington, on which Appellee relied upon the argument of this case.

II.

As to the fourth reason assigned above for a rehearing, if this language be intended as a finding by the Court, we submit that it is not warranted by the evidence, particularly in view of the testimony quoted above, which, together with much other testimony, shows that the oil is never "*gathered together at central points,* from which it is ultimately shipped to its destination." The oil was in a constant state of motion, and on arriving at Morgantown and other similar points, was moved out as rapidly as the capacity of Appellee's system would permit. It will hardly be maintained that any theoretical stoppage at these points should prevail over the actual

fact. To say that it was "ultimately shipped to its destina-
1621 tion," when the evidence shows that it was instantly shipped to its destination, or as instantly as the capacity of Appellee's system would permit, shows, we submit, a misapprehension of the facts.

III.

As to the fifth reason assigned above for a rehearing, the testimony is uncontradicted that the Carter Oil Company bought no credit balances whatever, but that all the oil which it handled had been produced by itself. Thus, Mr. Ware, Treasurer of the Carter Oil Company, (Min., p. 1001) testified that the business of his company was producing oil, gas and gasoline, and that during the twelve months in question it handled no oil except that of its own production, and bought no credit balances. This testimony was never attacked.

IV.

We will consider the sixth and seventh reasons together, since one depends upon the other in the language of the opinion. Let us assume, for the sake of argument, that the ninth and eleventh syllabi state the law correctly, and that, in order for oil to be in interstate commerce, it must, when or before the oil starts upon its journey, be definitely determined that it was destined to points without the State. Nevertheless, we submit that the finding and conclusion quoted from the opinion in the fifth and sixth reasons are erroneous.

The Court has apparently overlooked entirely the important and uncontradicted evidence of Mr. Kenney (Min., 205) when,
1622 referring to oil produced north of a line drawn east and west through Elm Run, he said:

"Q. With the exception of so much of the oil produced in the neighborhood of Eureka as goes to the St. Mary's refinery, do you not know whether the rest of the oil so produced as you have described, goes out of the State or not?

Mr. Avis: Are you referring to the physical oil?
Mr. Crawford: I am referring to the physical oil, in all my questions now.

A. Yes, sir, with that exception the oil does go out of the State.
Q. That is, all the oil produced in the State of West Virginia north of a line running east and west through Elm Run, except that which goes to the St. Mary's refinery, is that right?
A. Yes, sir, and the small deliveries mentioned at Downs Station.
Q. Oh, yes, amounting to forty or fifty barrels a year * * *.
A. About forty or fifty barrels a year."

And he continued at the same page, with reference to oil produced along the line running from Sand Fork:

"Q. And the same is true, is it not, of the oil produced on the line running down to Sand Fork or from Sand Fork, rather?
A. Yes, sir.
Q. All of that goes out of the State, does it not?
A. All of that oil goes out of the State."

1. Inasmuch as the total amount of oil delivered to the St. Mary's refinery is shown in the record, and as the amounts gathered
1623 north of the line stated as an east and west line running through Elm Run, and also all that brought to Morgantown through the line running through Sand Fork, though not in the record, could at any time be easily ascertained from the books of the Eureka Pipe Line Company by the tax authorities, we submit that the language in question quoted from the opinion and the conclusion based thereon are unwarranted, at least as to the oil gathered from the portions of the State above referred to. We would therefore respectfully ask that in any event the language of this finding and conclusion be modified to conform to the facts. We urge this with all the more force because the testimony is also conclusive that during the twelve months in question oil flowed in only one direction; that is, it flowed northeast from Elm Run and from Eureka through Braden and Downs to Morgantown, and in like manner from Sand Fork nearly north through Downs to Morgantown without any reverse current (Minutes, p. 77); so that even without Mr. Kenney's testimony quoted above, it could be seen that any other result is impossible; that is to say, all of this great body of oil must have gone out of the State, for there was nowhere else for it to go. Since, as already shown, the Pennsylvania Grade oil made no stop at Morgantown beyond that measured by the capacity of Appellee's system, it follows that the oil moving from all these sections last referred to was, even from the point of view of the ninth and eleventh syllabi, "definitely determined," when first received by the Eureka Pipe Line Company "to be destined to points without the State."

1624 2. Furthermore, all the Pennsylvania Grade oil delivered to The Eureka Pipe Line Company by the Carter Oil Company and the Hope Natural Gas Company, was produced by those companies and was destined by them even before production, to be sent out of the State.

Mr. Ware, Treasurer of the Carter Oil Company, testified (Min., p. 1004):

"Q. Prior to the production of oil had you any arrangements with any consignees whereby the oil that you produced was to be forwarded to them?
A. We did.
Q. Did that cover all the oil that you were to produce in West Virginia?
A. Yes, sir.
Q. And was it then your intention or purpose before you produced any of this oil, that is before it came out of the ground, that what-

ever oil you did produce should be forwarded in pipe lines to those consignees?

A. Yes, sir.

He further testified that this arrangement was in force during the twelve months in question, and that the purpose and intention which he testified to applied throughout that period. The amount produced by the Carter Oil Company and delivered to The Eureka, during the year in question was 401,772.44 barrels (Plaintiff's Ex. 43).

In like manner, Mr. Beardsley, Treasurer of the Hope Natural Gas Company, testified in substance that his company produced all the oil which it handled, and that it was the purpose and intention of his company, as to all of this oil, when it was first delivered to the Eureka Pipe Line Company

1625 * * * "to deliver it to the Eureka Pipe Line Company, to be tendered and sold to consignees * * * (at) Claremont and Bayonne" (Min., 1011-12).

The amount so produced by the Hope Natural Gas Company and delivered by it to the Eureka Pipe Line Company during the year in question, was 301,325.76 barrels (Pl. Ex. 43).

It is thus clear that, as to the oil delivered by the Carter Oil Company and the Hope Natural Gas Company, "it was definitely determined" as to all of it before or at the time of its delivery, "that the same was destined to points without the State." We submit, therefore, that this quantity of oil, aggregating some 703,098.20 barrels, should also be excepted from the conclusion that, as to all the oil gathered by it, the Appellee is engaged in the business of intrastate commerce.

V.

As to the general conclusion of law and decision quoted in the eighth reason assigned for a rehearing, much of the foregoing argument applies. We respectfully dispute that the Appellee transports any of the oil gathered by it "to the central points for the purpose of shipment," and we dispute, as already stated as to a very large part of the oil gathered by the Appellee, that there is any question as to it being destined to points without the State when it is first received. We also assert that the evidence shows conclusively that all *the physical oil*, the actual oil, moved throughout the State without a break or a stop, from the time it was received until it crossed

1626 the Pennsylvania State line, and that, without more, this constituted interstate commerce. Also, that as to all of such oil, except what was delivered to refineries within the State, it was destined by the carrier on its receipt to be taken out of the State. For all these reasons, we submit that the said conclusion of law and decision are erroneous.

To the end, therefore, that petitioner be not deprived of its undoubted rights, and to the end that correct principles of law may

be announced by the Court, and applied to the record herein, this petitioner respectfully requests that this Honorable Court will re-examine the law and the facts herein, and will define more accurately what is meant in the syllabi by the words, "destined to points without the State," and will specify those portions of the oil gathered by the Appellee to which the rule laid down in the syllabi, numbers nine and eleven of the opinion, shall not apply; and that the opinion handed down on November 26, 1920, and the decree of this Honorable Court entered on the same day, be so modified as to affirm the decree appealed from below in all respects.

Petitioners also ask leave to file hereafter, if they be so advised, in support of this petition, a further brief of authorities and argument.

Respectfully submitted this 20th day of December, 1920.

FRANK L. CRAWFORD,
A. B. FLEMING,
CHARLES POWELL,
KEMBLE WHITE,
H. C. DORWORTH,
Counsel for Plaintiff-Appellee.

1627 At another day, to-wit, on the 1st day of February, 1921, the following order was made and entered:

Absent: Judges Lynch and Lively.

4196.

EUREKA PIPE LINE COMPANY, Plaintiff Below, Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner, etc., et al., Defendants Below, Appellants.

Upon an Appeal from a Decree of the Circuit Court of Kanawha County, Pronounced on the 8th Day of September, 1920.

This day The Eureka Pipe Line Company, by its attorneys, and informed the Court that it desired to present a petition to the Supreme Court of the United States for a writ of error or writ of certiorari, or both, to the decree of this Court entered on the 26th day of November, 1920, and made final by the order of this Court entered on the 12th day of January, 1921, and moved the Court for an order suspending the execution of said decree and to stay the mandate herein for a period of ninety days from the 12th day of January, 1921, which motion is hereby granted; and it is ordered that, upon the said The Eureka Pipe Line Company ,or some one on its behalf, executing bond, in the penalty of Ten Thousand Dollars, conditioned according to law, before the Clerk of this Court, with surety to be approved by him, within ten days, execution on said decree be, and the same is hereby, suspended for a period of

ninety days from the 12th day of January, 1921, and that the mandate be stayed during such time.

A copy of said bond filed in the office of the Clerk of said Court is in the words and figures following:

1628 Know all men by these presents:

That we, The Eureka Pipe Line Company, a corporation, as principal, and United States Fidelity & Guaranty Company, a corporate bonding company authorized to do business in the State of West Virginia, as surety, are held and firmly bound unto the State of West Virginia in the just and full sum of Ten Thousand Dollars ($10,000.00), to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly, severally and firmly by these presents. Sealed with our seals and dated this 4th day of February, 1921.

The condition of the above obligation is such that,

Whereas, upon the application of The Eureka Pipe Line Company, a corporation, the Supreme Court of Appeals of the State of West Virginia, on the 4th day of February, 1921, entered an order suspending the execution of the decree entered by said court on the 26th day of November, 1920, and made final and absolute by a further decree entered by said court on the 12th day of January, 1921, whereby the petition for rehearing, filed therein by The Eureka Pipe Line Company, was refused and denied, and staying the mandate thereon for a period of ninety days from the 12th day of January, 1921, in a cause pending in said court, wherein said The Eureka Pipe Line Company was plaintiff below, appellee, and Walter S. Hallanan, State Tax Commissioner, and E. T. England, Attorney General, of the State of West Virginia, were defendants below, appellants, being cause No. 4196 upon the docket of said court, upon an appeal from a decree of the Circuit Court of Kanawha County, pronounced on the 8th day of September, 1920; conditioned upon the execution of a proper bond in the penalty and sum aforesaid, before the Clerk of said Supreme Court of Appeals of the State of West Virginia; and

1629 Whereas, said The Eureka Pipe Line Company intends to apply to the Supreme Court of the United States, or a Justice thereof, for a writ of error or writ of certiorari, or both, directed to the said Supreme Court of Appeals of the State of West Virginia, to review the said decree entered as aforesaid on the 26th day of November, 1920, and for the purpose of allowing said The Eureka Pipe Line Company time in which to make such application;

Now, therefore, if the said The Eureka Pipe Line Company, a corporation, shall pay all such damages as any person may sustain by reason of the said suspension, in case a supersedeas to said decree should not be allowed and be effectual, within the time so specified, then this obligation to be void; else to remain in full force.

Witness, the corporate name and corporate seal of The Eureka Pipe Line Company, affixed hereto by Allan T. Towl, *Towl*, its Vice President, and the corporate name and corporate seal of the said

United States Fidelity & Guaranty Company, affixed hereto by B. B. James, its duly authorized Attorney-in-fact.

THE EUREKA PIPE LINE COMPANY,
[SEAL.]
By ALLAN T. TOWL,
Vice President.
UNITED STATES FIDELITY & GUARANTY COMPANY, [SEAL.]
By B. B. JAMES,
Attorney-in-fact.

Signed, sealed and acknowledged before me, and approved as sufficient this 4th day of February, 1921.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals of W. Va.

A true copy.

Attest:

WM. B. MATHEWS,
Clerk.

1630 In the Supreme Court of Appeals of West Virginia.

No. 4196.

THE EUREKA PIPE LINE COMPAKY, a Corporation, Plaintiff-Appellee,

vs.

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Defendant-Appellents.

It is hereby stipulated, consented and agreed, that the Clerk of the Supreme Court of Appeals of the State of West Virginia be and hereby is directed, in preparing and certifying a transcript of the record in the above entitled case, for the use of the Supreme Court of the United States and one or more of the Justices thereof, upon any application which may be made by The Eureka Pipe Line Company for a writ of error or a writ of certiorari, or both, or for use on the hearing and argument of the said cause in the said Supreme Court of the United States, to exclude and omit therefrom the following papers, testimony, exhibits and documents, that is to say:

Plaintiff's Exhibit "Eureka Pipe Line Company Interstate Commerce Commission Tariffs," filed with bill of complaint August 26, 1919.

Plaintiff's Exhibit "First Map," filed with bill of complaint August 26, 1919.

Plaintiff's Exhibits Nos. 8, 9, 10, 12, 13 and 14. In lieu of said Exhibits Nos. 8, 9, 10, 12, 13 and 14 a brief transcript of said ex-

hibits, being joint tariffs of Prairie Pipe Line Company I. C. C. Nos. 30, 66, 58, 17, 48 and 43, shall be included.

1631 Plaintiff's Exhibit No. 39, "Duplicate Tender of Shipments Cumberland Pipe Line Company." Original was filed as exhibit with bill of complaint and is to be included.

Plaintiff's Exhibit No. 40, "Notice of Tender of Shipment of Cumberland Pipe Line Company." Original was attached to bill of complaint and is to be included.

Plaintiff's Exhibit No. 46, and Exhibits 46-*a* to 46-*l*, inclusive.

Plaintiff's Exhibits Nos. 47 to 52, both inclusive.

Plaintiff's Exhibit No. 55.

Plaintiff's Exhibits Nos. 57 and 58.

Plaintiff's Exhibits Nos. 60 and 61.

Plaintiff's Exhibits Nos. 63 and 64.

Plaintiff's Exhibits Nos. 66 to 66-*l*, inclusive.

Plaintiff's Exhibits Nos. 69 and 70.

Plaintiff's Exhibits Nos. 71, 72, 73, 74, 75, 76 and 77; also duplicate originals of said Exhibits Nos. 71, 72, 73, 74, 75 76 and 77.

Plaintiff's Exhibits Nos. 79 and 79-*a*.

Plaintiff's Notice of Motion to Amend Bill of Complaint by omitting the words "incidental storage."

Also, the following testimony and copies of documents on the pages and parts of pages in the record, such omissions being as follows:

1632

Plaintiff's Exhibit No.	Record pages.	
4	296- 299.	Omit from words "and read as follows" in line 8 of p. 296, to and including the whole of page 299.
42	543- 544.	Omit from words "and reads as follows" in line 11, p. 543, to and including the whole of page 544.
45	928- 933.	Omit from words, "and is as follows" on p. 927, to and including the whole of page 933.
53	1146	Omit from words, "Mr. Crawford," line 9 of p. 1146, to and including the end of page.
54	1169-1171.	Omit from words, "Mr. Crawford" on 3rd line of p. 1169, to and including 12th line on page 1171.
55	1173-1174.	Omit from words "and reads as follows" on 8th line of p. 1173, to and including 10th line on p. 1174.
56	1175-1176.	Omit from words "reads as follows" on last line of p. 1174, to and including 2nd line of p. 1176.
57	1178	Omit from words "and reads as follows" on 12th line of p. 1177, to and including entire page 1178.

Plaintiff's Exhibit No.	Record pages.	
58	1183	Omit from words "and reads as follows" on line 11 of p. 1182, to and including entire page 1183.
59	1194	Omit from words "and reads as follows" on line 13, p. 1193, to and including entire page 1194.
60	1196	Omit from words "read as follows" on line 21, p. 1195, to and including entire p. 1196.
61	1197	Omit entire page 1197.
1633		
62	1198	Omit entire page 1198.
63	1199	Omit entire page 1199.
64	1203	Omit from words, "and reads as follows" on 8th line of p. 1202, to and including entire p. 1203.
65	1205	Omit from words "and reads as follows" on 16th line of p. 1204, to and including entire page 1205.
67	1245-1246.	Omit from words "and reads as follows" on 17th line, p. 1245, to and including 6th line on p. 1246.
68	1267-1268.	Omit from words, "and reads as follows" on line 11, p. 1267, to and including line 6 on p. 1268.
79a	1383	Omit from words "reading as follows," on 1st line of p. 1383, to and including the 22nd line on p. 1383.
79b	1422-1424.	Omit from words "reading as follows" on line 14, p. 1422, to and including line 18 on p. 1424.
80	1393	Omit from words "reading as follows" on last line of p. 1392, to and including entire p. 1393.
81	1399	Omit from words "reading as follows" in line 5, p. 1399, to and including remainder of p. 1399.
83	1413	Omit from words "reading as follows" on last line of p. 1412, to and including entire p. 1413.

1634 There shall also be omitted and excluded all of the testimony of plaintiff's witness George F. Whitehead, the same appearing on pages 1053 to 1142, inclusive, and on pages 1312 to 1356, inclusive, of the typewritten record.

There shall also be omitted and excluded all of the testimony of plaintiff's witness John W. Johnson, the same appearing on pages 1357 to 1375, inclusive, of the typewritten record.

And it is further stipulated that the transcript of record as so made up, may be used as the complete record in the case by The Eureka Pipe Line Company, as plaintiff in error in said Supreme Court of the United States, for all purposes for which said record may be required, including applications for such writs, and including the hearing and argument of the cause.

It is further stipulated and agreed that said The Eureka Pipe Line Company shall and will not, upon the application in this cause for any Writ of Error or Writ of Certiorari from the Supreme Court of the United States to the Supreme Court of Appeals of West Virginia, or upon the hearing and argument of the said cause in the said Supreme Court of the United States, raise or put in issue in any way whatsoever the contention that the tax provided for in Chapter 5 (House Bill No. 3) of the Acts of the Legislature of West Virginia, Extraordinary Session 1919, is or was confiscatory as against The Eureka Pipe Line Company, or the contention that said Act is discriminatory because it exempts pipe lines less than ten miles in length from the proposed tax.

THE EUREKA PIPE LINE COMPANY,
By FRANK L. CRAWFORD,
Counsel.

1635 WALTER S. HALLANAN,
State Tax Commissioner, and
E. T. ENGLAND,
Attorney General of West Virginia,
E. T. ENGLAND,
Attorney General,
By W. G. MATHEWS,
S. B. AVIS,
FRED O. BLUE,
JOHN T. SIMMS,
Counsel.

1636 Supreme Court of the United States, October Term, 1920.

THE EUREKA PIPE LINE COMPANY, Plaintiff in Error,

against

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Defendants in Error.

Petition for Writ of Error.

To the Honorable Edward D. White,
Chief Justice of the Supreme Court of the United States:

Now comes the above named The Eureka Pipe Line Company, plaintiff in error, as aforesaid, and represents that it is a corporation, as stated in the record in the above entitled cause, and that on the 26th day of November, 1920, a decree was made and entered by the

Supreme Court of Appeals of West Virginia, affirming in part and reversing in part the decree of the Circuit Court of Kanawha County, West Virginia, made and entered by the last named court on the 8th day of September, 1920, in a suit in equity wherein the petitioner, The Eureka Pipe Line Company, was plaintiff, and Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, were defendants, and awarding costs in favor of the defendants; that on the 30th day of November, 1920, said Supreme Court of Appeals of West Virginia made and entered an order directing that its said decree made as aforesaid on November 26, 1920, should become final, unless within thirty days thereafter a petition for a rehearing should
1637 be filed; that on or about the 23rd day of December, 1920, and within the said period of thirty days specified in said order, your petitioner filed a petition praying for a rehearing of the said cause by the said Supreme Court of Appeals of West Virginia, but that on the 12th day of January, 1921, the said Supreme Court of Appeals of West Virginia made an order denying the said petition for a rehearing of said cause, and directing that the said decree theretofore and on November 26, 1920, entered in said cause as aforesaid, be made absolute, and thereupon said decree became a final decree in said cause.

That your petitioner, The Eureka Pipe Line Company, on or about the 26th day of August, 1919, filed its bill of complaint in Chancery in said cause in the Circuit Court of Kanawha County, State of West Virginia, against the defendants below (defendants in error here), praying in substance that the defendant Walter S. Hallanan, State Tax Commissioner of said state, and all persons acting under his authority and direction, be perpetually enjoined from enforcing against your petitioner Chapter 5 (House Bill No. 3) of the Acts of the Legislature of West Virginia, Extraordinary Session of 1919, and from requiring your petitioner to make any return or report under said Act to said Walter S. Hallanan, State Tax Commissioner as aforesaid, and from assessing against and collecting from your petitioner any tax, penalty or fine under said Act; that the defendant below (defendant in error here) E. T. England, Attorney General of the State of West Virginia, and all persons acting under his authority or direction, be perpetually enjoined from enforcing said Act against your petitioner, and from proceeding to have your petitioner, its property, agents or employees held liable for any
1638 tax, penalty or fine prescribed in said Act, and also praying that said Act be decreed unconstitutional and void as to your petitioner, its property, franchises and business, on the ground that the said Act violated and was repugnant to the Constitution of the United States, and particularly Section 8 of Article 1 thereof, and also the Fourteenth Amendment thereto; thereupon the defendants below (defendants in error here) filed their joint and separate demurrer and answer to said bill, denying that the said Act violated the Constitution of the United States in any respect, and praying in substance that the prayer of the bill be denied, and that the bill be dismissed.

Your petitioner avers that in its said bill of complaint, filed as

aforesaid, it expressly charged that the said Act of the Legislature of West Virginia was invalid because it levied a tax and imposed a burden upon interstate commerce and otherwise violated Section 8 of Article I of the Constitution of the United States, and also because if enforced it would deprive your petitioner of property without due process of law, in violation of the Fourteenth Amendment to the said Constitution; that at the trial of said cause, your petitioner expressly made and argued Federal claims based on all said grounds of constitutionality set up as aforesaid in petitioner's said bill of complaint; that by final decree entered by the said Circuit Court of Kanawha County, West Virginia, on the 8th day of September, 1920, defendants in error (defendants below) were perpetually enjoined in accordance with the prayer of the said bill of complaint; and it was further adjudged in substance that the Act in question was wholly unconstitutional and void as to your petitioner, its property, franchises and business, in substance, on the ground that
1639 said Act imposes a burden upon interstate commerce, and that "in so far as the law affects intrastate commerce, it is only incidentally, and the two are so closely interwoven in the Act, which treats them as one, that the Court cannot separate the taxes imposed upon them and say that one is constitutional and the other unconstitutional" under the Federal Constitution.

That the defendants below (defendants in error here) took an appeal from said decree to the said Supreme Court of Appeals of West Virginia, and that, upon the hearing of said appeal, your petitioner again urged Federal claims based upon all of said grounds of constitutionality alleged in petitioner's bill of complaint as aforesaid; that thereafter and on the 26th day of November, 1920, the said Supreme Court of Appeals of West Virginia reversed the said decree of the said Circuit Court to the extent that the said last mentioned decree enjoined the defendants below (Defendants in error here) from enforcing against your petitioner the provisions of said Act so far as the same apply to intrastate commerce as intrastate commerce is defined in the written opinion of the said Supreme Court of Appeals of West Virginia filed in this cause, and said Supreme Court of Appeals then further adjudged not merely that said Act as construed by said court was valid as to intrastate commerce in general, but that the said Act was constitutional and valid as to a large and specific portion of the business carried on by your petitioner during the period involved in this cause, to wit, the twelve months ending June 30th, 1919, which portion of such business your petitioner avers was interstate commerce; and in all other respects said Supreme Court of Appeals of West Virginia affirmed the said decree of the said Circuit Court of Kanawha County, West Virginia.

1640 Your petitioner further shows that said Act, as construed by the said Supreme Court of Appeals of West Virginia, and so as aforesaid adjudged by it to be valid and constitutional in respect to said portion of the business carried on by your petitioner during said period, does in respect to said portion of said business impose a direct burden upon interstate commerce and thereby vio-

lates the Constitution of the United States, and particularly Section 8 of Article I thereof; that your petitioner therefore respectfully submits that the construction placed upon said Act by the said Supreme Court of Appeals of West Virginia by its definition of intrastate commerce, as set forth in such written opinion, is not a construction by which the United States Supreme Court is concluded, but one concerning which the said Court should determine the questions raised under the Federal Constitution upon its own judgment of the actual operation and effect of the tax imposed by such Act.

Your petitioner further shows that in said cause there was drawn in question the validity of a statute of the state of West Virginia, to wit: said Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, Extraordinary Session held in 1919, and of an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States of America, and especially Section 8 of Article I of said Constitution, and Article XIV of the Amendments to the said Constitution, and the decision in said cause of the said Supreme Court of Appeals of West Virginia, was, as aforesaid, in favor of such validity in part.

That your petitioner was and is aggrieved by the said decree of the said Supreme Court of Appeals of West Virginia, and by the proceedings had prior thereto, and claims that in the afore-
1641 said decree and proceedings certain errors were committed, to the prejudice of your petitioner, all of which will more fully appear from the assignment of errors which is filed herewith.

Wherefore your petitioner prays that a writ of error from the Supreme Court of the United States may issue in this cause to the Supreme Court of Appeals of West Virginia, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the said Supreme Court of Appeals of West Virginia, may be sent to the Supreme Court of the United States, as provided by law, and that such other or further proceedings may be had in the premises as may be just and proper.

Dated, March 7, 1921.

THE EUREKA PIPE LINE CO.,
By FORREST M. TOWL,
President.

FRANK L. CRAWFORD,
Attorney for Petitioner and Plaintiff in Error.

1642 Supreme Court of the United States, October Term, 1920.

THE EUREKA PIPE LINE COMPANY, Plaintiff-in-Error,

against

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, Defendants-in-Error.

Assignments of Error.

Now comes the above named plaintiff-in-error, by its attorney, Frank L. Crawford, and in connection with its petition for writ of error herein, says that in the records and proceedings and in the rendering of the decree and decision of the Supreme Court of Appeals of West Virginia in the above entitled cause, manifest error has intervened to the prejudice of this petitioner and plaintiff-in-error in this, to wit:

First. That the said Supreme Court of Appeals of West Virginia erred in making and entering the decree originally made and entered in this cause on the 26th day of November, 1920, but suspended and thereafter made absolute and final by an order entered in said court on the 12th day of January, 1921, upon an appeal from the decree of the Circuit Court of Kanawha County, West Virginia, pronounced on the 8th day of September, 1920, in and by which decree first mentioned the said Supreme Court of Appeals of West Virginia sustained, as to part of said decree of said Circuit Court, the motion made by the defendants below (defendants-in-error here) to
1643 reverse the said decree of the said Circuit Court.

Second. That the said Supreme Court of Appeals of West Virginia erred in making and entering the final decree originally made and entered in said Court on the 26th day of November, 1920, but suspended and thereafter made absolute and final by an order entered in said court on the 12th day of January, 1921, by which final decree it was adjudged, ordered and decreed as follows, to-wit: (Italics not in original)

"That the decree of the Circuit Court of Kanawha County, pronounced in this cause on the 8th day of September, 1920, in so far, and in so far only, as it decrees and holds the Transportation Act, mentioned and described in the bill and proceedings in this cause, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, Extraordinary Session held in 1919, to be void and perpetually inhibits, enjoins and restrains the appellants from enforcing or attempting to enforce against the appellee, in any manner or respect, the provisions of said act in so far as the same apply to *intrastate commerce as defined by the written opinion* filed herein, be and the same hereby is set aside, reversed and annulled."

because, as defined by the written opinion filed by said Supreme Court of Appeals in this cause, intrastate commerce was made to include a large portion of the business carried on by plaintiff-in-error during the period involved in this cause, to wit, the twelve months ending June 30, 1919, which portion of such business plaintiff-in-error claims was wholly interstate; that, therefore, the effect of said decree was to adjudge that the said Act, as construed by said Court, imposed a valid tax upon the said interstate business of plaintiff-in-error, so that under the construction of the said Supreme Court of Appeals of West Virginia the said Act imposes a direct burden upon interstate commerce, and thereby violates the Constitution of the United States, and particularly Section 8 of Article I thereof.

1644 Third. That the said Supreme Court of Appeals of West Virginia erred in holding and deciding that the statute of West Virginia known as Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, Extraordinary Session held in 1919, as construed by said Court, both as to the subject of the tax provided for in said Act and as to the measure of such tax, applies only to intrastate commerce carried on by the plaintiff in error, as such intrastate commerce is defined in the written opinion filed by said Court in this cause, and, therefore, is valid and is not repugnant to the Constitution of the United States, and particularly to Section 8 of Article I thereof, and would not, if enforced against the plaintiff-in-error, deprive the plaintiff-in-error of its property without due process of law, in violation of the Fourteenth Amendment to the said Constitution; because such construction is tantamount to a declaration that the Legislature of West Virginia intended, by said Act, to impose a tax, not on intrastate commerce as defined by the law, but on certain specific things, to wit, on a specific part of the business of plaintiff-in-error, which plaintiff-in-error claims to be interstate commerce, and because the Act, as so construed, is clearly repugnant to the Constitution of the United States, as aforesaid, and invalid.

Fourth. That the said Supreme Court of Appeals of West Virginia erred in holding and deciding that the statute of West Virginia known as Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, Extraordinary Session held in 1919, as properly construed, covered certain specific things, to wit, a specific part of the business of plaintiff-in-error, which plaintiff-in-error claims to have been interstate; but that said Act was, nevertheless, valid: whereas such Act, as so construed, is clearly repugnant to the Constitution of the United States, and particularly to
1645 Section 8 of Article I thereof.

Fifth. That said Supreme Court of Appeals of West Virginia erred in holding and deciding that the statute of West Virginia, known as Chapter 5 (House Bill No. 3) of the Acts of the Legislature of West Virginia, Extraordinary Session held in 1919, applies only to intrastate commerce carried on by the plaintiff-in-error as such intrastate commerce is defined in a written opinion filed by said Court in this

cause, and, therefore, is valid and is not repugnant to the Constitution of the United States, and particularly to Section 8 of Article I thereof; because as such intrastate commerce is so defined it includes a large portion of the business of plaintiff-in-error which was wholly interstate; that therefore the effect of said decision was to adjudge that the said Act, as construed by said Court, imposed a valid tax upon the said interstate business of plaintiff-in-error, and since the amount of such tax or imposition is by the language of the Act made to fluctuate with the volume of the business done, said Act, under said construction, imposes a direct burden upon interstate commerce, and thereby violates the Constitution of the United States, and particularly section 8 of Article I thereof.

Sixth. That the said Supreme Court of Appeals of West Virginia erred in finding, holding and deciding that the business carried on by the plaintiff-in-error, so far as such business related to oil produced in West Virginia and gathered by the plaintiff-in-error, consisted in gathering such oil and transporting it to central points for the purpose of shipment and that such business was intrastate commerce and was subject to the tax sought to be collected by the defendants in error under the authority of Chapter 5 (House
1646 Bill No. 3) of the Acts of the Legislature of the State of West Virginia, Extraordinary Session held in 1919, whereas the evidence in the record shows that the whole of the oil produced in West Virginia and gathered by the plaintiff-in-error during the period involved in this cause, to wit, the twelve months ending June 30, 1919, except 1,239,099.55 barrels thereof, was transported in a continuous stream without stoppage or delay (other than those incident to transportation) from the point and time where and when such oil was received by the plaintiff-in-error until it was delivered at the State line of West Virginia to a connecting carrier, by which it was further transported into or across the State of Pennsylvania, the said amount of 1,239,099.55 barrels of oil being thrown off from the main stream of oil without stopping the same, and being delivered to refineries within the State of West Virginia; that the whole of said transportation, with the exception noted, was, therefore, interstate commerce, and that said Act, as construed by said Court, imposes a tax upon such transportation, and, therefore, violates Section 8 of Article I of the Constitution of the United States, and deprives plaintiff-in-error of its property without due process of law, in violation of the Fourteenth Amendment to the said Constitution.

Seventh. That the said Supreme Court of Appeals of West Virginia erred in finding, holding and deciding that the business carried on by the plaintiff-in-error, so far as the same related to oil produced in West Virginia and gathered by plaintiff-in-error, consisted in gathering such oil and transporting it to central points for the purpose of shipment and that such business was intrastate
1647 commerce and subject to the tax sought to be collected by the defendants-in-error under the authority of Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, Extraordinary Session held in 1919, whereas the uncon-

tradicted evidence in the record clearly establishes that all the oil so produced, and so gathered by the plaintiff-in-error, north of an east and west line drawn through Elm Run, West Virginia, and also all of the oil so produced and so gathered in the vicinity of Sand Fork, West Virginia, and along and in the vicinity of the pipe line of plaintiff-in-error, running north from Sand Fork to Morgantown, West Virginia, during the period involved in this cause, to wit, the twelve months ending June 30th, 1919, was transported out of the State of West Virginia in continuous interstate transportation and, under the conditions under which the pipe-line system of the plaintiff-in-error was operated, could not have been delivered to, or remained at, any point within said State, and that such transportation was carried on with the full knowledge, on the part of all persons concerned, of the said facts, and with the full intention on the part of the shippers of said oil, as well as of the plaintiff-in-error, that all of such oil should be transported out of the State of West Virginia in interstate commerce and that none of it should be delivered or remain within that State. That, therefore, the transportation by the plaintiff-in-error of the oil produced in said localities, which formed a large part of the whole of the oil produced in West Virginia and gathered by the plaintiff-in-error, was transported solely in interstate commerce; that said Act, as construed by said Court, imposes a tax upon the transportation of such oil, and, therefore violates Section 8 of Article I of the Constitution of the United States, and deprives plaintiff-in-error of its property without due process of law, in violation of the Fourteenth Amendment of the said Con-
1648 stitution.

Eighth. That the said Supreme Court of Appeals of West Virginia erred in reversing the decree of the Circuit Court of Kanawha County, West Virginia, made and entered in said cause by the Court last named on the 8th day of September, 1920, to the extent that the defendants-in-error were by said decree enjoined from collecting upon the business of the plaintiff-in-error, so far as such business consisted in the transportation of oil produced and gathered in West Virginia, the tax sought to be imposed by a certain statute of West Virginia, to wit, Chapter 5 (House Bill No. 3), of the Acts of the Legislature of the State of West Virginia, passed at the Extraordinary Session held in 1919, and in holding such Act, as construed by said Supreme Court of Appeals, to be valid as to, and to cover all, such business of plaintiff-in-error, and in making and entering the final decree against this plaintiff-in-error, complained of as error in the petition for writ of error to this Court, and the order entered on the 12th day of January, 1921, making such decree absolute and final, because the evidence in the record in said cause shows that all the business of the plaintiff-in-error during the period involved in said cause, to wit, the twelve months ending June 30, 1919, except a relatively small amount of said business which consisted in the transportation of 1,239,099.55 barrels of crude oil produced and delivered within the State of West Virginia, was interstate commerce; and because the assessment and collection of taxes upon any part of the business of the plaintiff-in-error during said period, with the excep-

tion noted, would assess and collect taxes upon property not subject to taxation in the State of West Virginia, would violate Section 8 of Article I of the Constitution of the United States, and
1649 would deprive this plaintiff-in-error of its property without due process of law, in violation of the Fourteenth Amendment of said Constitution.

Ninth. That the said Supreme Court of Appeals of West Virginia erred in holding and deciding that a large part of the credit certificates given by the plaintiff-in-error in exchange for oil delivered to the plaintiff-in-error for transportation through its lines, during the twelve months ending June 30, 1919, were brought by the Carter Oil Company (a large shipper through the lines of the plaintiff-in-error during said period), whereas the uncontradicted evidence in the record clearly establishes that all the oil shipped by the said Carter Oil Company through the pipe-lines of the plaintiff-in-error, was produced by the Carter Oil Company from its own wells, and was shipped by it in interstate commerce to consignees outside of the State of West Virginia, and that it was the intention of said Carter Oil Company so to ship such oil, before its shipment and even before its production; that as the result of such finding, a Federal right was denied, to wit, the right to have free from State taxation a large part of the business of plaintiff-in-error, which consisted in transporting oil in interstate commerce, and there is no evidence to support such finding; hence a question of law results for decision.

Tenth. That the said Supreme Court of Appeals of West Virginia erred in finding and deciding that the oil produced in West Virginia which was transported by the plaintiff-in-error during the twelve months ending June 30, 1919, was delivered to the numerous branch lines of the plaintiff-in-error and gathered together by it at central points from which it was ultimately shipped to its destination, some of it within and some of it without the State. Also in finding
1650 and deciding the following finding of like tenor to the foregoing, to wit:

"It appears that a large part of the business of the pipe-line company is the transportation of oil from the producing wells in the State to central points, where it is delivered into its trunk pipe lines and shipped to points, some of which are within, and some of which are without the State. For this gathering process the pipe line company charges a regular and separate charge, and the business is carried on generally before the oil is destined to any particular point, but while it is simply being gathered up and collected in such quantities as that the owners thereof may find a ready market for it, and then after it is so sold it is transported by the pipe line company through its trunk lines to the point of destination, in most instances without the State of West Virginia."

That the conclusion of law as to a Federal right, to wit, as to the right of plaintiff-in-error to be free from state taxation on transportation carried on by it in interstate commerce, is so intermingled with the foregoing findings as to cause it to be necessary, for the purpose

of passing on the said Federal question, to analyze and dissect the facts upon which such findings were based, and to review such findings.

Eleventh. That the said Supreme Court of Appeals of West Virginia erred in finding and deciding the following finding:

"It cannot be denied that when the oil is delivered to the pipe line company (plaintiff-in-error) it has no fixed destination. It is known that beyond all reasonable probability a large part of it ultimately will go outside of the State, and a considerable part of it be used within the State at local refineries, but as to what particular producer will sell his oil to the local refineries, and as to which particular producer will ship his oil without the State, is not determined until after the oil is gathered, and the gathering charge above referred to has accrued to the pipe line company (plaintiff-in-error)."

That the conclusion of law as to a Federal right, to wit, as to the right of plaintiff-in-error to be free from state taxation on transportation carried on by it in interstate commerce, is so intermingled with the foregoing finding, as to cause it to be necessary for the
1651 purpose of passing on the said Federal question, to analyze and dissect the facts upon which such finding was based, and to review such finding.

Twelfth. That the said Supreme Court of Appeals of West Virginia erred in holding and deciding that

"Commodities in transit cannot be said to be interstate commerce until it is definitely determined that they are destined to points without the State, even though past experience and the course of business in which the owner of such commodity is engaged may justify the assumption that a large part thereof will ultimately be transported beyond the borders of the State."

Thirteenth. That the said Supreme Court of Appeals of West Virginia erred in holding and deciding that

"A pipe line company doing business in this State which receives the oil produced at numerous wells and transports the same to its main pipe lines or tanks within the State, and makes a definite charge for such service, is engaged in intrastate commerce, as to the oil so transported, where it appears that at the time such oil was so received and transported to its main lines or tanks by it, it was not definitely determined that the same was destined to points without the State, even though past experience may indicate and justify the belief that a large part of the same will ultimately be shipped without the State in interstate commerce."

Fourteenth. That, except as to the portion of such oil so gathered, which was delivered within the State of West Virginia, the said Supreme Court of Appeals of West Virginia erred in holding and deciding that under the state of facts found by the Court and set forth

in its opinion and decision in this cause handed down on the 26th day of November, 1920, the process of gathering and transporting by the plaintiff-in-error, oil produced in West Virginia, for which the charge of twenty cents was formerly made and for which thirty cents was charged at the date of rendering said decision, is or was engaging in the business of intrastate commerce.

1652 Fifteenth. That the said Supreme Court of Appeals of West Virginia erred in holding and deciding that an Act of the State of West Virginia, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of that State, passed at its Extraordinary Session in 1919, imposing a tax upon the business of engaging in the transportation of oil and gas by pipe lines, properly construed, imposes such tax only on those engaged in the transportation of such commodities in intrastate commerce, measured by the amount of such commerce, and that said Act is, therefore, constitutional and does not violate Section 8 of Article I of the Constitution of the United States, and does not violate the Fourteenth Amendment of the said Constitution.

Sixteenth. That the said Supreme Court of Appeals of West Virginia erred in holding and deciding that said Act of the State of West Virginia, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of that State, passed at its Extraordinary Session in 1919, properly construed is a valid exercise of the legislative power imposing a tax upon the privilege of carrying on the business of intrastate commerce in the transportation of oil and gas based upon the amount of such commerce, and that said Act is, therefore, constitutional and does not violate Section 8 of Article I of the Constitution of the United States, and does not violate the Fourteenth Amendment of the said Constitution.

Seventeenth. That the said Supreme Court of Appeals of West Virginia erred in holding and deciding that the tax provided for in a certain statute of West Virginia, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, Extraordinary Session held in 1919, when such Act is properly
1653 construed, is only a tax upon the privilege of engaging in transporting oil or gas in intrastate commerce within the confines of the State of West Virginia, and that it does not extend to the privilege of engaging in interstate commerce within or without the State, and that, therefore, the said Act is valid and is not repugnant to the Constitution of the United States, and particularly to Section 8 of Article I thereof.

Eighteenth. That the said Supreme Court of Appeals of West Virginia erred in reversing in part the decree made and entered in said cause by the Circuit Court of Kanawha County, West Virginia, on the 8th day of September, 1920, and in making and entering the final decree against this plaintiff-in-error, complained of as error in the petition for Writ of Error to this Court, whereby the said decree of said Circuit Court was reversed to the extent that the defendants-in-error had been by said decree of said Circuit Court enjoined from

collecting upon the intrastate business of the plaintiff-in-error (as such intrastate business is defined by the written opinion of said Supreme Court of Appeals of West Virginia filed in this cause), a tax sought to be levied by the defendants-in-error, under the authority of a certain statute of the State of West Virginia, being Chapter 5 (House Bill No. 3) of the Acts of the Legislature of the State of West Virginia, passed at its Extraordinary Session held in 1919, because, inasmuch as said statute applies by its terms to both interstate and intrastate commerce, and, as to interstate commerce, is repugnant to and invalid under the Constitution of the United States, and particularly Section 8 of Article I thereof, it was error to hold and decide that said statute was valid as to intrastate commerce and especially as to any portion whatsoever of such business of the plaintiff-in-error during the period involved in said cause, to wit, the
1654 twelve months ending June 30, 1919, since it is not possible from an inspection of the said Act to say whether or not the Legislature of West Virginia would have imposed the tax provided for in said Act on the privilege of handling oil carried in intrastate commerce alone, had it been exempting oil carried in interstate commerce and since the Act is, therefore, not divisible.

Wherefore the said The Eureka Pipe Line Company, plaintiff-in-error as aforesaid, prays that the said decree of the said Supreme Court of Appeals of West Virginia in so far only as it adjudged that the decree of the Circuit Court of Kanawha County, West Virginia, pronounced in the foregoing cause on the 8th day of September, 1920, should be set aside, reversed and annulled, and that the plaintiff-in-error in this court (appellee in the court below) should pay to the defendants-in-error (appellants below) their costs about the prosecution of their appeal to the said Supreme Court of Appeals, be reversed and set aside, and that such further proceedings in said cause shall be had as to justice shall appertain.

Dated March 7, 1921.

FRANK L. CRAWFORD,
Attorney for Petitioner and Plaintiff in Error.

1655 Original.

In the Supreme Court of the United States.

THE EUREKA PIPE LINE COMPANY, Plaintiff in Error,

against

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. ENGLAND, Attorney General of the State of West Virginia, Defendants in Error.

Order Allowing Writ of Error.

On reading the petition of The Eureka Pipe Line Company, plaintiff in error, praying for the allowance of a writ of error from the

Supreme Court of the United States to the Supreme Court of Appeals of the State of West Virginia, intended to be urged by said petitioner, and praying further that a duly au henticated transcript of the records, proceedings and papers on which the decree of said Supreme Court of Appeals of West Virginia was made, may be sent to the Supreme Court of the United States, at Washington, District of Columbia, and that such other and further proceedings may be had in the premises as may be just and proper, and upon reading the assignments of error filed by said petitioner with its said petition; Now upon due consideration of said petition and assignments, and of the record in said cause, it is

Ordered that a Writ of Error be allowed from the Supreme Court of the United States to the Supreme Court of Appeals of the State of West Virginia, as prayed for in said petition, and that said
1656 writ of error and citation thereon be issued, served and returned to the Supreme Court of the United States, in accordance with law, upon condition that the said petitioner and plaintiff in error give a bond and security, according to law, in the sum of Twenty five thousand dollars ($25,000.00) that the said plaintiff in error shall prosecute said Writ of Error to effect, and that if said plaintiff in error fail to make its plea good, it shall answer to the defendants in error for all costs and damages that may be adjudged and decreed on account of said Writ of Error, and said bond, when approved, shall operate as a supersedeas bond and stay of execution in said cause.

In witness whereof I have hereunto set my hand this 10th day of March, 1921.

EDWARD D. WHITE,
Chief Justice of the United States.

1657 Copy.

Know all men by these presents, that we, The Eureka Pipe Line Company, as principal, and United States Fidelity and Guaranty Company, a corporation of the State of Maryland, of Baltimore, Maryland, as sureties, are held and firmly bound unto Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, in the full and just sum of Twenty-five Thousand dollars, to be paid to the said Walter S. Hallanan, State Tax Commissioner, as aforesaid, and E. T. England, Attorney General, as aforesaid, their and each of their certain successors attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this tenth day of March, in the year of our Lord one thousand nine hundred and Twenty-one.

Whereas, lately at a Term of the Supreme Court of Appeals of the State of West Virginia, that being the highest Court of said State, in a suit depending in said Court, between The Eureka Pipe Line Company, a corporation of West Virginia, and Walter S. Hallanan, State

Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, a decree was rendered against the said The Eureka Pipe Line Company and the said The Eureka Pipe Line Company having sued out a Writ of Error from the United States Supreme Court, to the said Supreme Court of Appeals of West Virginia, and having obtained such writ and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Walter S. Hallanan, State Tax Commissioner, as aforesaid, and E. T. England, Attorney General, as aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said The Eureka Pipe Line Company shall prosecute said Writ of Error to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE EUREKA PIPE LINE CO., [SEAL.]
By ALLAN T. TOWL,
Vice-President.
E. W. ZIEGLER, [SEAL.]
Asst. Secy.
UNITED STATES FIDELITY AND GUARANTY COMPANY, [SEAL.]
By LEE B. MOSHER,
Attorney-in-Fact.

Sealed and delivered in presence of—
FRANK L. CRAWFORD.
H. E. RICHMOND.

Approved by—
(Signed) EDWARD D. WHITE,
Chief Justice of the United States.

1658 25¢ internal-revenue stamp duly canceled on original hereof.

Certified Copy.

General Power of Attorney.

24710.

Know all men by these presents:

That the United States Fidelity and Guaranty Company, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint Lee B. Mosher, Charles R. Hooff and George D. Robey of the City of Washington, District of Columbia, its true and lawful attorneys for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said United State Fidelity and Guaranty Company, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said United States Fidelity and Guaranty Company, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever any one of the said Lee B. Mosher and the said Charles R. Hooff and the said George D. Robey may lawfully do in the premises by virtue of these presents.

In witness whereof, the said United States Fidelity and Guaranty Company has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 7th day of May, A. D. 1919.

[Seal United States Fidelity and Guaranty Company.]

UNITED STATES FIDELITY AND GUARANTY COMPANY,

(Signed) By W. W. SYMINGTON,
Vice-President.

(Signed) WM. M. PEGRAM,
Assistant Secretary.

STATE OF MARYLAND,
Baltimore City, ss:

On this 7th day of May, A. D. 1919, before me personally came W. W. Symington, Vice-President of the United States Fidelity and Guaranty Company, and Wm. M. Pegram, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said W. W. Symington and Wm. M. Pegram were respectively the Vice-President and Assistant Secretary of the said United States Fidelity and Guaranty Company, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first Monday in May, A. D. 1920.

[SEAL.] (Signed) WARREN S. LLOYD,
Notary Public.

STATE OF MARYLAND,
Baltimore City, sct:

I, Stephen C. Little, Clerk of Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Warren S. Lloyd, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and author-

ized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In testimony whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 7th day of May, A. D. 1919.

[SEAL.] (Signed) STEPHEN C. LITTLE,
Clerk of the Superior Court of Baltimore City.

1659 *Copy of Resolution.*

That whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, Wm. M. Pegram, Assistant Secretary of the United States Fidelity Guaranty Company, do hereby certify that the above and foregoing is a full, true and correct copy of the original power of attorney given by said Company to Lee B. Mosher, Charles R. Hooff and George D. Robey of Washington, D. C., authorizing and em-

powering them to sign bonds as therein set forth, and do hereby further certify that the said power of attorney is still in full force and effect.

Given under my hand and the seal of said Company, at Baltimore, Maryland, this 14th day of April, A. D. 1920.

[Seal United States Fidelity and Guaranty Company.]

WM. M. PEGRAM.

I, Wm. M. Pegram, Assistant Secretary of the United States Fidelity and Guaranty Company, hereby certify that at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company, at the City of Baltimore, on the 11th day of July, A. D. 1910, at which was present a quorum of said Directors, duly authorized to act in the premises, resolutions were passed and entered on the minutes of said Company, of which resolutions the foregoing is a true copy and of the whole thereof.

In testimony whereof, I have hereunto set my hand and the seal of the United States Fidelity and Guaranty Company, this 7th day of May, A. D. 1920.

[SEAL.] (Signed) WM. M. PEGRAM,
Assistant Secretary.

[Endorsed:] Certified Copy. No. 24710. General Power of Attorney from United States Fidelity and Guaranty Company to Lee B. Mosher, et al., Washington, D. C. 5-7-19. Fidelity Judicial Casualty Contract.

A true copy from the original which has been filed in my office this 14th day of March, 1921.

WM. B. MATHEWS,
Clerk Supreme Court of Appeals of West Virginia.

1660 Original.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of the State of West Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Appeals of the State of West Virginia, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Eureka Pipe Line Company, a corporation, plaintiff-appellee in said Court, plaintiff in error in the Supreme Court of the United States, and Walter S. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General of the State of West Virginia, defend-

ants-appellants in said Court, defendants-in-error in the Supreme Court of the United States, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being
1661 repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said The Eureka Pipe Line Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the tenth day of March, in the year of our Lord one thousand nine hundred and twenty-one.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by
EDWARD D. WHITE,
Chief Justice of the United States.

1662 [Endorsed:] Supreme Court of the United States, October Term, 1920. The Eureka Pipe Line Company, plaintiff-in-error, vs. Walter L. Hallanan, State Tax Commissioner of the State of West Virginia, and E. T. England, Attorney General, etc., defendants-in-error. Filed Mar. 14, 1921. Wm. B. Mathews, clerk of the Supreme Court of Appeals. Writ of error. Frank L. Crawford, attorney for plaintiff-in-error, 32 Liberty street, New York City.

1663 **Original.**

UNITED STATES OF AMERICA, *ss:*

To Walter S. Hallanan, State Tax Commissioner, and E. T. England, Attorney General, of the State of West Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Appeals of the State of West Virginia, wherein The Eureka Pipe Line Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judg-

ment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this tenth day of March, in the year of our Lord one thousand nine hundred and Twenty-one.

EDWARD D. WHITE,
Chief Justice of the United States.

1664 Legal service of within writ accepted by me this the 14th day of March, 1921.

E. T. ENGLAND,
Attorney General of the State of West Virginia.
W. S. HALLANAN,
State Tax Commissioner.

1665 STATE OF WEST VIRGINIA:

In obedience to the commands of the within writ, I, Wm. B. Mathews, Clerk of the Supreme Court of Appeals of West Virginia, herewith transmit to the Supreme Court of the United States a true and complete transcript of the record in the cause of Eureka Pipe Line Company against Walter S. Hallanan, State Tax Commissioner, and E. T. England, Attorney General, of the State of West Virginia, as the same appears upon the records of my said office, except in so far as the parties to said cause, by counsel, by a stipulation in writing and made a part of this transcript, have directed the omission of portions of the record designated in said stipulation, together with all things concerning the same, which transcript is comprised of pages numbered from 1 to 1665.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 15th day of March, 1921, and in the 58th year of the State.

[Seal of the Supreme Court of Appeals, West Virginia.]

WM. B. MATHEWS,
Clerk Supreme Court of Appeals of West Virginia.

Endorsed on cover: File No. 28,162. West Virginia Supreme Court of Appeals. Term No. 805. The Eureka Pipe Line Company, plaintiff in error, vs. Walter S. Hallanan, State tax commissioner, and E. T. England, attorney general, of the State of West Virginia. Filed March 16th, 1921. File No. 28,162.

Office Supreme Court, U. S.
FILED
SEP 28 1921
JAMES D. MAHER,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

THE EUREKA PIPE LINE COMPANY,
Plaintiff-in-Error,

against

WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General, of the State of West Virginia,
Defendants-in-Error.

Writ of Error to the Supreme Court of Appeals of the State of West Virginia.

No. 255

THE EUREKA PIPE LINE COMPANY,
Petitioner,

against

WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General, of the State of West Virginia,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of Appeals of the State of West Virginia.

No. 255

BRIEF FOR PLAINTIFF-IN-ERROR AND PETITIONER

JAMES M. BECK,
FRANK L. CRAWFORD,
Attorneys for Plaintiff-in-Error and Petitioner.

SUBJECT INDEX.

PAGE

Statement of the Case 1
The Issue 7
The Facts 8
All oil mingled in a common stock 10
The physical oil moves through the State in a continuous stream without distinction of ownership 12
Oil delivered out of a common stock the equivalent in law of the very oil received ... 16
Intent established by evidence 20
The gathering charge 24
Specification of Errors 26
Brief of Argument 31

POINT I.—The physical oil, having been transported in a continuous stream through and out of the State, without delay and without distinction of ownership, except as to small portions diverted *en route* to three State refineries, was in interstate commerce from the moment it was received 31

POINT II.—In any event, all such physical oil, with negligible exceptions, gathered in the northern one-third part of West Virginia, was transported out of the State, no portion thereof being diverted *en route,* and the same was, therefore, in interstate commerce from the inception of its journey 38

POINT III.—The physical oil having, at the outset of its journey, been delivered to a common carrier, and having never ceased to be in the custody of a common carrier until transported out of the State, except as to relatively small portions diverted *en route,* must be held, upon leaving the tanks of the producers, to "have been started upon transportation to another State in a continuous

PAGE

route or journey," and, therefore, to have been in interstate commerce "from the very minute that it was delivered" to the plaintiff-in-error 39

POINT IV.—Under the Pipe Line Act of West Virginia, as construed by the highest court of that State, the delivery of a like amount of oil of the same grade in lieu of that received was equivalent in law to the delivery of the very oil received 41

POINT V.—In view of said construction of said Act and of the evidence of intent, it will be presumed, as to an amount of oil equal to the amount delivered to a consignee without the State for the account of the shipper, that, before the same was received by the plaintiff-in-error, it was definitely determined that such oil so received was destined to points without the State and the transportation of such oil by plaintiff-in-error was, therefore, all in interstate commerce 44

POINT VI.—The gathering charge of twenty cents involved at most a case of "re-billing *en route*," which was immaterial, in view of the intention of the parties and of the general course of business 46

POINT VII.—Where intrastate and interstate transactions are so interwoven as in the instant case, the authority of Congress extends to the whole situation 49

POINT VIII.—The decree of the Supreme Court of Appeals, in so far only as it modified the decree of the Circuit Court, except as to oil diverted *en route* to refineries within the State, should be reversed and in all other respects should be affirmed; and the decree of the Circuit Court should be modified by excepting therefrom only the oil so diverted, and, as so modified, should be affirmed 50

CASES CITED.

	Pages in Brief
Arkadelphia Co. *v.* St. Louis S. W. Ry. Co., 249 U. S., 134	39, 40, 41
Atchison, Topeka & Santa Fe Ry. Co. *v.* Harold, 241 U. S., 371	46
Bacon *v.* Illinois, 227 U. S., 504	39, 40, 41
Bailey *v.* Bensley, 87 Illinois, 556	37, 42, 43
Bracht *v.* San Antonio, &c., Ry. Co., 254 U. S., 489	36, 37, 47
Chicago, R. I. & Pa. Ry. Co. *v.* Wright, 239 U. S., 548	32, 33
Coe *v.* Errol, 116 U. S., 517	24, 39
Creswill *v.* Knights of Pythias, 225 U. S., 246	45, 48
Crew Levick Co. *v.* Pennsylvania, 245 U. S., 292	42
Dana *v.* Dana, 250 U. S., 220	7
Erie R. R. Co. *v.* Winfield, 244 U. S., 170	49
General Oil Co. *v.* Crain, 209 U. S., 211	39
Hall *v.* Pillsbury, 43 Minn., 33	42, 43
International Text Book Co. *v.* Pigg, 217 U. S., 91	33
Interstate Amusement Co. *v.* Albert, 239 U. S., 560	48
Kenney *v.* Supreme Lodge, 252 U. S., 411	6
Lottery Case, 188 U. S., 321	33
McCluskey *v.* Marysville & No. Ry. Co., 243 U. S., 36	39, 40
Mergenthaler Linotype Co. *v.* Davis, 251 U. S., 256	7
Minnesota Rate Cases, 230 U. S., 352	49
National Exc. Bank of Hartford *v.* Wilder, 34 Minn., 149	42
North Carolina R. R. Co. *v.* Zachary, 232 U. S., 248	20, 33, 48

Pages in Brief

N. Y. Central R. R. *v.* Mohney, 252 U. S., 152 7
Ohio R. R. Comm. *v.* Worthington, 225 U. S., 101 .....33, 34, 39, 44, 45, 46
Penna Gas Co. *v.* Pub. Service Commission, 252 U. S., 23 ..... 35, 36
People, *ex rel.* Penn. Gas Co. *v.* Saxe, 229 N. Y., 446 36
Phila. & Reading Ry. Co. *v.* Hancock, 253 U. S., 284 6
Phila. & Reading Ry Co. *v.* Polk, U. S. Adv. Ops., 1920-21, page 630..... 49
R. R. Comm. of Louisiana *v.* Texas & Pac. Ry Co., 229 U. S., 336 44
South Covington Ry. *v.* Covington, 235 U. S., 537 ..... 46, 47
Southern Pac. Co. *v.* Schuyler, 227 U. S., 601 . . .. 20, 48
Southern Pac. Co. *v.* Industrial Accident Commission, 251 U. S., 259..... 7
Southern Pacific Terminal Co. *v.* Int. Commerce Commission, 219 U. S., 498..... 44
Southern Ry. Co. *v.* United States, 222 U. S., 20 49
Standard Oil Co. *v.* Graves, 249 U. S., 389.. 39
Swift *v.* United States, 196 U. S., 375..... 36
Texas & N. O. R. R. Co. *v.* Sabine Tram. Co., 227 U. S., 111 .....36, 44, 46, 47
Thornton *v.* Duffy, 254 U. S., 361 42
United States *v.* Hill, 248 U. S., 420..... 32
Ward *v.* Love County, 253 U. S., 17 7
Waters-Pierce Oil Co. *v.* Texas, 177 U. S., 28 42
Western Oil Refining Co. *v.* Lipscomb, 244 U. S., 346 .....34, 35, 44, 46, 47
Western Union Tel. Co. *v.* Speight, 254 U. S., 17 32

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

THE EUREKA PIPE LINE COMPANY, Plaintiff-in-Error, AGAINST WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General, of the State of West Virginia, Defendants-in-Error.	Writ of Error to the Supreme Court of Appeals of the State of West Virginia. No. 255.

THE EUREKA PIPE LINE COMPANY, Petitioner, AGAINST WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General, of the State of West Virginia, Respondents.	Petition for Writ of Certiorari to the Supreme Court of Appeals of the State of West Virginia. No. 255.

BRIEF FOR PLAINTIFF-IN-ERROR AND PETITIONER.

Statement of the Case.

I.

The Eureka Pipe Line Company, plaintiff-in-error, on or about March 9th, 1921, together with its assignment of errors, filed its petition herein for a Writ of Error to

the Supreme Court of Appeals of the State of West Virginia, to review the final decree and judgment of that Court rendered in this cause, and on March 10th, 1921, the late Mr. Chief Justice White ordered that such Writ of Error be allowed and issued. On the same day, a supersedeas bond was given and approved and the Writ of Error was thereupon issued, served and returned.

On or about April 8, 1921, the said The Eureka Pipe Line Company, petitioner (being also plaintiff-in-error), duly filed its petition in the same cause for a Writ of Certiorari and presented the same on May 2, 1921. This Court thereupon made an order directing that the decision on the petitioner's motion for such Writ of Certiorari be deferred until the hearing on the said Writ of Error.

As is apparent, the two remedies of Writ of Error and Writ of Certiorari are sought in the same cause, solely because of uncertainty on the part of the plaintiff-in-error (petitioner) as to the proper remedy, there being, in fact, but one cause. Counsel for respondents have not opposed the application for a Writ of Certiorari, but moved to advance the cause, in which application counsel for petitioner joined.

All references in this brief, unless otherwise stated, are to the printed pages of the Record. All italics are ours.

II.

In this suit, defendants-in-error (respondents) seek to recover from plaintiff-in-error (petitioner) a tax claimed to be lawfully imposed on the latter by the Act set forth below, for the privilege of engaging in the business of transporting crude oil by pipe lines in the State of West Virginia during the twelve months beginning July 1, 1919.

III.

The validity of a statute of the State of West Virginia, entitled Chapter 5 (House Bill No. 3) of the Acts of the Legislature of West Virginia, Extraordinary Session of 1919, is drawn in question in this case, on the ground of its being repugnant to the Constitution of the United States. The statute is printed in full on the back of Exhibit "Form of Tax Return" annexed to the Bill of Complaint (Record, 22), and also as Appendix I to this brief, and is commonly referred to as the Transportation Tax Act. Its provisions, so far as they are deemed necessary to the decision of this case, are as follows:

> "An Act to levy *a privilege tax* on any person, firm or corporation engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the State Tax Commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the State Tax Commissioner hereunder."
>
> "Section 1. No person, firm or corporation, hereinafter called company, after the first day of July, one thousand nine hundred and nineteen, shall *engage in or continue in the business of the transportation of crude oil or petroleum,* * * * *by means of pipe lines, without the payment of an annual privilege tax hereby imposed for engaging in such business;* provided, however, that nothing contained in this act shall apply * * * where the crude oil, petroleum * * * is by the entire system of such person, firm or corporation, transported a distance of less than ten miles.
>
> "Section 2. Every person, firm and corporation engaged in this state in the transportation of either crude oil or petroleum * * * by means of pipe lines *for sale to consumers within or without the state, or use within or without the state* in the making of any products derived therefrom, shall pay to the state, *as an annual privilege tax for engaging in such business in the state two cents for each barrel of crude*

oil or petroleum * * * so transported or conveyed *within this state.* Provided, that only one such tax, annually, shall be required to be so paid.

"Section 3. Every person, firm or corporation liable to tax imposed by this act, shall, within sixty days after the first day of July, one thousand nine hundred and nineteen, * * * deliver to the State Tax Commissioner *a return in writing, showing the quantity of crude oil or petroleum* * * * *transported or conveyed within this state during the fiscal year ending on the first day of July next preceding.* Such return * * * shall be in the form prescribed by the state tax commissioner.

* * * * * * * *

"Section 9. Any person engaging or continuing in the business aforesaid without having first secured a license, as hereinbefore provided, shall be liable to a fine of not less than one thousand dollars nor more than ten thousand dollars."

IV.

This is a suit in equity in which the Bill of Complaint, filed in the Circuit Court of Kanawha County, West Virginia, on or about the 26th day of August, 1919, prayed for an injunction restraining defendants-in-error (respondents), from enforcing against plaintiff-in-error (petitioner), the said Transportation Tax Act; and that the Act be adjudged unconstitutional and void as to plaintiff-in-error (petitioner) on the ground that it was repugnant to the Constitution of the United States, and particularly to Section 8 of Article I thereof. (Record, 22.) The answer denied that the Act violated the Constitution of the United States (Record, 35). The final decree of the Circuit Court of Kanawha County granted the prayer of the Bill, and adjudged in substance that the Act was wholly unconstitutional and void under the Federal Constitution, as to the plaintiff-in-error (petitioner), its property, franchises and business. (Record, 694.) The defendants-in-error (respondents) appealed from the final decree of the Circuit Court to the

Supreme Court of Appeals of West Virginia, and moved the latter Court to reverse that decree (Record, 695-99). On the arguments in both Courts, plaintiff-in-error (petitioner) urged, defendants-in-error (respondents) opposed, and the Court considered, Federal claims based upon the above mentioned grounds of unconstitutionality. (Record, 690, 701-2.)

V.

The final decree of the Supreme Court of Appeals in substance reversed the final decree of the Circuit Court of Kanawha County to the extent that the latter decree held the Transportation Tax Act to be void and to the extent that it enjoined defendants-in-error (respondents) from enforcing against plaintiff-in-error (petitioner) "the provisions of said Act in so far as the same apply to *intrastate commerce as defined in the written opinion*" of the Supreme Court of Appeals, filed in the cause, and in all other respects affirmed the decree of the Circuit Court (Record 701-2). The decree of the Supreme Court of Appeals was originally made on the 26th day of November, 1920, and, having been suspended pending the application of this plaintiff-in-error (petitioner) for a re-hearing, was made absolute and final by an order entered January 12, 1921, denying the petition for a re-hearing (Record 721).

VI.

The Supreme Court of Appeals, with a view to saving the constitutionality of the Act, construed it in the former part of its opinion (Record, 710) as applying only to intrastate commerce, though it subsequently qualified this construction and, in its final decree, as above stated, confined the application of the Act not to intrastate commerce in general, but to "intrastate commerce *as defined by the written opinion filed*" in

the case by that Court. (Record, 702). As so construed, the Act was held to be constitutional.

Similarly, the final clause of the opinion of the Court (Record, 720), reads as follows:

> "What we have said results in a reversal of the decrees of the Circuit Court to the extent that the defendants are enjoined from collecting the tax upon the intrastate business of the complainants *as the same is above defined*, and in all other respects said decree will be affirmed."

As so defined in such opinion, intrastate commerce is made to include a large part of the interstate business of plaintiff-in-error (petitioner), so that, as we contend, the Act as construed by the highest court of the State is repugnant to the interstate commerce clause, and is, therefore, invalid as an attempt to "achieve a result that the Constitution of the United States forbade."

Kenney v. *Supreme Lodge,* 252 U. S., 411, 415.

It would seem therefore, that a writ of error was properly allowed. In view, however, of the language of Section 237 of the Judicial Code, as amended by the Act of September 6, 1916, counsel for plaintiff-in-error (petitioner), for greater certainty, ask that a writ of certiorari also be granted, since plaintiff-in-error (petitioner) also claims a "right, privilege and immunity" under the Constitution of the United States, and the decision of the State Court was against such "right, privilege and immunity."

The petitioner claims that it is immune from the tax imposed by the Act as to all the oil in question which was actually transported out of the State, and that it was "its right and privilege" to transport the same free from the burden of this, or of any other, State tax, because such transportation was all in interstate commerce.

Phila. & Reading Ry. Co. v. *Hancock,* 253 U. S., 284.

Ward v. *Love County*, 253 U. S., 17, 22.
N. Y. C. R. R. Co. v. *Mohney*, 252 U. S., 152.

Again, if the validity of the West Virginia Act, as construed by the State Court, be no longer drawn in question, yet certainly the scope of its applicability is involved, and this in a number of cases has been held sufficient to sustain a writ of certiorari.

Southern Pac. Co. v. *Industrial Accident Commission*, 251 U. S., 259.
Mergenthaler Linotype Co. v. *Davis*, 251 U. S., 256, 259.
Dana v. *Dana*, 250 U. S., 220.

VII.

The Issue.

The real issue here in controversy is as to whether some 5,007,309 barrels of crude oil of the so-called Pennsylvania grade, produced in West Virginia, gathered (i. e. piped from producer's tanks at the wells) by plaintiff-in-error (petitioner), and transported by it through the State, and by connecting carriers out of the State, during the twelve months ending July 1, 1919, were not transported in interstate commerce from the time the oil was first received by plaintiff-in-error.

The Supreme Court of Appeals held that all the oil gathered by plaintiff-in-error in West Virginia was transported in intrastate commerce, although only 1,239,099 barrels out of a total of 6,238,912 barrels, or less than 20% thereof, were delivered within the State.

The amount of the tax which the defendant-in-error (respondent) seeks to impose on the plaintiff-in-error (petitioner) for the privilege of so transporting said 5,007,309 barrels of oil is about $100,000.

VIII.

The Facts.

1. The plaintiff-in-error (petitioner) is a West Virginia corporation organized December 22, 1890. Its principal office and place of business are at Oil City, Pennsylvania. It does a very large business in the transportation by pipe lines (1) of oil originating in other States and carried through West Virginia, and (2) of oil originating in West Virginia, gathered partly by itself and partly by others, transported to, or near to, the State line between Pennsylvania and West Virginia, and there delivered to connecting carriers for transportation into, through and beyond Pennsylvania. It also does a relatively small intrastate business in transporting oil which is both gathered and delivered to consignees, within the State of West Virginia.

2. Plaintiff-in-error (petitioner) is a common carrier both under the laws of West Virginia and under the Acts of Congress, and, generally speaking, does not own the oil which it transports. (Record, 89).

> Laws of W. Va., Acts of 1891, Chap. 113, Sec. 24, re-enacted as serial Sec. 2833 of the Code of W. Va. (Record, 59).
>
> Interstate Commerce Act; U. S. Compiled Statutes, Ed. 1916, Vol. 8, p. 9049, (Record, 61).

3. A pipe line, as the word is commonly used, may consist either of a single pipe or of several parallel pipes, with pumping stations at various intervals, and with branch lines running into the main lines. This terminology is confusing. In the present brief, the word "pipe" will be used where there is but a single pipe, the word "line," where there are several parallel

pipes, and the word "system" as applied to the whole pipe line plant of the plaintiff-in-error.

At various points in the field (in this case throughout the State of West Virginia), wells are sunk by producers, who flow their oil into their own tanks. The pipe line company extends small pipes from its own receiving tanks to tanks of the producers. The oil usually runs into the tanks of the pipe line company by gravity. This process is called "gathering" the oil. (Record, 524-5). The oil is immediately pumped from the receiving tanks into the larger lines and joins the stream of oil which flows continuously through and out of the State, except for the relatively small amounts of oil diverted *en route* to refineries within the State. There are pumping stations at frequent intervals through which the stream of oil is successively pumped.

The pipe line system of The Eureka Pipe Line Company is contained within the boundaries of the State of West Virginia, but extends to the State lines of Kentucky, Ohio and Pennsylvania, at various points thereof. In addition to oil produced in West Virginia, large quantities of oil of various grades produced elsewhere are received by plaintiff-in-error (petitioner) from connecting carriers at the boundaries of each of those states, and are transported through portions of West Virginia and delivered to other connecting carriers at or near the State line between West Virginia and Pennsylvania. The map, Appendix II, based on Plaintiff's Exhibit 3, shows in general outline the location of the various portions of the Eureka's system, through which the general movement of the oil is in an easterly and northerly direction across the State to the Pennsylvania State line. (Record, 81.)

4. Except for its limited intrastate business, the pipe line system of the plaintiff-in-error (petitioner), is in effect only one portion of a vast network of pipe lines, which form a continuous conduit for the transportation

of oil from the States of Texas, Oklahoma, Kansas, Kentucky and West Virginia, and from various intermediate points, to various refining points in Indiana, Ohio, Pennsylvania and other states and the Atlantic Seaboard. A second map, Plaintiff's Exhibit 32, (annexed to this brief as Appendix III), shows the general course of these pipe lines, and indicates the part which the system of The Eureka Pipe Line Company plays in the transportation of the crude oil from various oil fields (including that of West Virginia), to eastern refiners. The bulk of the oil carried by that company is turned over at the Pennsylvania State Line either to the Southern Pipe Line Company, (which latter company, with its connections, carries the oil to Bayonne, Philadelphia, Baltimore and other points) or to the Southwest Pennsylvania Pipe Lines.

5. The principal witnesses in regard to the general operations of The Eureka Pipe Line Company were Mr. Kenney, Assistant Superintendent, Mr. Swisher, General Shipping Agent, and Mr. Towl, President, of the Company.

6. Various grades of oil pass through the system of The Eureka Pipe Line Company. The only grade of importance here is that known as *Pennsylvania grade*, which is the term applied to the principal oil produced in West Virginia, Pennsylvania and Southeastern Ohio. No other grade of oil is produced in substantial quantity in West Virginia.

All Oil Mingled in a Common Stock.

7. In the pipe line business, as conducted by the plaintiff-in-error, (petitioner) all oil of a particular grade is received by the carrier into the same pipes and tanks, is there intermingled without distinction of ownership, and deliveries and shipments are made out of the common stock of oil of that grade momentarily in the possession of the carrier. This practice is per-

mitted by law and is stipulated in the regulations of the tariffs forming part of the contract of carriage.

Code of W. Va., Sec 3554 (Record, 52).
Plaintiff's Exhibits 19 to 31. Regulation third.
Record, 160, 163, 291-2, 300-1, 313-14.

The opinion of the Supreme Court of Appeals says (Record, 718, italics ours):

> * * * "The agreement of the owner of the oil upon delivery is not that he shall receive back the same oil that he has delivered, *but the same amount of oil of a similar grade.* * * * The exigencies of the business, as well as the law of the land, justify the contract."

The principal other requirement imposed by law in regard to deliveries is that the pipe line company shall always have in its possession "an amount of merchantable oil equal to the aggregate" of its liabilities to shippers.

Code of W. Va., Sec. 3564 (Record, 56).

This does not mean oil standing still, but oil in motion through the Eureka's system. (Kenney, Record, 163).

8. When The Eureka Pipe Line Company receives oil from a producer in West Virginia, the latter is given a credit for the amount—in barrels, not money,—on the books of the Company. The net amount of oil standing to his credit on the books at any time is called a "credit balance." (Record, 288-9). This credit balance may be sold wholly or partly, or a delivery or consignment may be ordered against it. Amounts sold or consigned are debited on the books and deducted from the "credit balance." If the owner desires to make a delivery

against his credit balance, within the State, he issues to the Company what is called a "delivery order," copy of which is in evidence as Plaintiff's Exhibit 37. (Record, 292, 667). When he wishes oil to the amount of his credit balance or part thereof to be delivered out of the State, he issues to the Pipe Line Company what is called a "tender of shipment," which is in original and duplicate. The duplicate having been accepted by the Pipe Line Company is returned to the shipper as his voucher, corresponding roughly to a bill of lading. Thereupon the Pipe Line Company gives notice of this tender to all subsequent carriers. (Swisher, Rec., 288-295; Plff's Exs. 38-40).

The *physical oil*, however, when received from the producer, *does not stop* on account of these credit entries and transfers, but "*moves on in the usual channel or stream* * * * it always moves forward." When a transfer of oil is spoken of, it is these credit balances which are referred to. (Record, 290-1).

The physical oil moves through the State in a continuous stream, without distinction of ownership.

9. The entire mass of Pennsylvania grade oil gathered by The Eureka Pipe Line Company in West Virginia during the twelve months in question was moved along *through* the State, and to the extent of more than 80 per cent., thereof, (Plff's Exhibit 4, Sheet 1, Record, 664-5), *out* of the State, as rapidly as the exigencies of transportation would permit, *in one continuous stream of oil*, without reference to any specific ownership. The evidence as to this is conclusive. Thus Kenney:

Cross-examination by Mr. Avis:

> (Record, 114). "We do not hold oil for any length of time. The *oil is moved along in a general way from day to day.*
>
> (117). "The oil is not held in our system. *It moves along daily, in the general stream of oil.*"

(157). "Q. When oil is offered to you for transportation and is not consigned * * * what is done with that oil until * * * the oil is assigned (consigned?) to some particular person * * * or to some delivery point?

"A. *The physical oil moves into our regular stream of oil* and may leave the State. * * *

(159-60). "Q. Is that true all along your line, that when oil is delivered to you in quantities unconsigned, you keep a sufficient quantity on hand at the nearest tanks for delivery or to meet the orders of the owner when he does consign it?

"A. No, sir *we move the oil along in a continuous stream and do not particularly hold it at any point for any person or corporation.* The Eureka Pipe Line Company has at all times in its pipes and tanks moving along, sufficient stock of any grade to cover its obligations.

* * *

"Q. The oil that is produced north of Elm Run of producers or owners who deliver to you for transportation, unconsigned, is how held or stored until it is consigned?

"A. *That oil is not held. It moves along through our pipes with the stream of that particular grade of oil, and is not held in our pipes or tanks.*

"Q. Then you expect if the owner should consign that oil to any point other than a point that would have to go through the Morgantown Station, you would have to draw oil from some other place on your line to meet his order, would you not?

(160). A. We would deliver an equal amount of the same grade and quality of oil at any of the terminals on our line that he might so designate."

So also Swisher:

(290). "Q. When you receive oil and you enter a credit on your production books, what becomes of the physical oil, the actual oil?

A. The *physical actual oil moves on in the usual channel or stream* towards—well, it always moves forward.

(291). Q. *Unless it has been delivered within the State* of West Virginia, where does it move to?

A. *It moves outside the State.*

Q. In other words, the actual physical oil does not stop on account of any of this matter of credit and debit entries or transfer from a production account to the general oil account?

A. No, sir.

Q. Actual oil is in the stream which is run through the State of West Virginia and out into another state unless it has been delivered to refineries within the State?

A. Yes, sir."

Swisher—*Cross-examination:*

(341-2). "Q. Do I understand * * * that if I were a producer in Kanawha County * * * and should deliver to you unconsigned 500 barrels of oil, that you would start that oil to move forward without any order from me?

A. *It would move right in the regular stream along with the other oil.*

Q. And it might possibly go out of the State before I consigned it, might it not?

A. Yes, sir.

Q. And it would probably do so?

A. It would probably do so, that particular oil."

To the same effect, see Kenney, Record, 113, 158: Swisher, Record, 360, 390, 400, 401, 403.

Upon this point, the opinion of the Supreme Court of Appeals (Record, 717-8), says:

> "At the time the oil is delivered into the pipe lines, the Eureka Company gives to the owner a credit certificate showing that it holds for him a certain number of barrels of oil, and the oil is then transported through the small feeding lines into which it is delivered until it ultimately reaches the trunk lines. *Of course, movement of oil through the trunk lines is continuous* * * *."

10. During the twelve months in question, a total amount of some 6,238,912 barrels of Pennsylvania grade oil produced in West Virginia was gathered by the Eureka Pipe Line Company, of which 5,007,309.20 bar-

rels were transported in the way above described, in a continuous stream through the State, to or near to the Pennsylvania State line, where it was delivered to connecting carriers and was moved immediately out of the State (Plff's Ex. 4, Rec., 664; Rec., 190; 231-247, 252).

All the oil of Pennsylvania grade produced north of a line drawn east and west through Elm Run, Ritchie County, West Virginia, gathered by plaintiff-in-error, with the exception of so much of the oil produced in the neighborhood of Eureka as went to St. Mary's refinery and of the negligible delivery of 50 barrels at Downs (Kenney, Rec., 81-2), and also all such oil produced and gathered in and around Sand Fork, in Gilmer County, and along the pipe line of plaintiff-in-error, running north from Sand Fork to Downs (all said points being in West Virginia), went out of the State (Kenney, Record, 70, 143), and could have gone nowhere else, since there was no refinery in West Virginia to which any of that oil could have been delivered, having in mind the course of the oil through the Eureka's lines, as the business was then carried on. (Towl, Record, 621; Map Appendix II.) The territory so delimited included about one-third of the entire State and not less than thirteen counties in which Pennsylvania grade oil was produced and gathered by plaintiff-in-error, during the period in question. (Record, 143.) All of this oil also moved in a continuous stream out of the State (Rec., 159). There was, of course, no change in the form of the oil, no refining process having supervened.

Of the total amount of 6,238,912 bbls. gathered by the plaintiff-in-error, only 1,239,099, or less than twenty per cent. of it was diverted *en route* from the main stream of oil and delivered within the State. These deliveries, with negligible exceptions, were made to the so-called Elk refinery, near Charleston, West Virginia, to a refinery at Parkersburg on the Ohio River; and to the St. Mary's refinery near Eureka, also on the Ohio River. (See Map, Appendix II.) It is conceded that

the oil so delivered to these refineries was transported by petitioner in intrastate commerce. The oil so delivered to St. Mary's refinery came from the immediate vicinity of Eureka, on the Ohio River (Record, 87). The oil delivered to the Elk refinery also came from a nearby field. (Record, 83.) Deliveries to the Parkersburg refinery were made through a single pipe forming a closed conduit which left the Eureka's main stream at Elm Run station. (Record, 86.) None of these deliveries could have affected, or did affect, the course of the main stream of oil, containing more than 80 per cent. of the whole, which was constantly moving through and out of the State, a fact well known to both producers and carrier from the time the oil was first received by the latter. As the Supreme Court of Appeals said in its opinion, (Record, 718):

> "It is known that beyond all reasonable probability (doubt) a large part of it (the oil) ultimately will go outside of the State * * *."

Oil delivered out of a common stock the equivalent in law of the very oil received.

11. Although, as already shown, the physical oil actually received by the Eureka was intermingled in its lines without distinction of ownership, yet the Supreme Court of Appeals construed the Pipe Line Act of West Virginia as meaning that *delivery out of a common stock of "a like amount of oil of the same grade in lieu of that received is the equivalent in law of the delivery of the very oil received;"* and said, "The parties by their contract make it so, and the exigencies of the business, as well as the law of the land, justify the contract." (Record, 718). In the light of this construction, it may be confidently asserted, as matter of law, that all the West Virginia oil of Pennsylvania grade gathered by The Eureka Pipe Line Company and transported out of the State was,

at the time of its initial delivery to that company, in contemplation of law though not literally destined by its owners and by the pipe line company to be so transported. (See Points IV and V *infra.*)

(a) All the oil so transported is shown in Plaintiff's Exhibit 43 (Record, 667). This is a table of the amounts of oil produced in West Virginia pumped out of the common stock during the twelve months in question through the various Eureka stations named in I. C. C. tariffs, and transported out of the State. (Record, 300.) Omitting an item of Somerset oil and the Pennsylvania grade oil pumped from Cabin Creek, which was not gathered by plaintiff-in-error (Plff's Ex. 4; Record, 187, 666), the table (Ex. 43) may be presented in condensed form as follows, all the oil being of Pennsylvania grade, except 7,496.60 barrels.

Exhibit 43 (Condensed).

Stations	Grade	Amount pumped in barrels
From Morgantown	Pennsylvania	3,638,517.02
From Morgantown	Cabell	7,496.60
		3,646,013.62
From Downs, Brice, Bula, Hoffman, Core, Bucher, Gibson, Bell, Carson, Murray, Scott, Jake's Run and Littleton	Pennsylvania	722,704.79
	Total	4,368,718.41

The stations mentioned in this Exhibit are presumably those referred to in the opinion of the Supreme Court of Appeals, where it speaks (Record, 717) of gathering the oil together

> "at *central points,* from which it is ultimately shipped to its destination."

And again (Record, 719), of

> "transporting it (the oil) to the *central points* for the purpose of shipment."

The reference to "central points" is due to a misunderstanding as to Exhibit 43 above. The Court below treated the points named in that Exhibit as "*central points*" or delivery points, whereas they are referred to by the witnesses as "*tariff points*" (Swisher, Rec., 375); that is, points named in the Interstate Commerce tariffs from which the so-called "tenders" for out of State deliveries would be received. They are not delivery points at all, no deliveries having been made at them, except a negligible amount at Downs (Record, 81-2). They are obviously not "central" at all, being all near, and most of them substantially adjacent to, the Pennsylvania State line. (See Map, Appendix II.) All the refineries within the State at which deliveries were actually made were far to the South and the general stream of oil moved only to the East and North. (Record, 81.) When deliveries to the refineries mentioned were to be made for account of the holders of credit balances which represented oil received by the Pipe Line Company at one of the northern points, such deliveries consisted not of the physical oil received at the northern point, but of an equivalent amount of oil of the same grade gathered from some neighboring field.

The fact is that the "tariff points" named in Plaintiff Exhibit 43, except Cabin Creek, are simply the last stations in West Virginia through which was pumped the stream of oil incessantly rolling into Pennsylvania. They may be compared to gateways. As the oil reached those stations, portions of it were successively designated to fill the so-called "tenders of shipment," made by owners of credit balances, who exercised their right to have consigned to destinations in another State out of the common stock of the same grade of oil momentarily in the stream of oil passing those points, a

"like amount * * * in lieu of that received." (Record, 718.)

The interstate journey of this oil, however, had begun at the well; the designation of the oil to particular tenders was little more than a bookkeeping transaction, the stream of oil continuing on in unbroken course.

(b) Plaintiff's Exhibit 65 (Record, 679), gives a list of the consignors and consignees, with the quantities consigned, of all the oil shown on Exhibit 43, less the small item of Somerset oil. The totals in the two exhibits, after certain deductions explained below, are the same.

The last two items in Exhibit 65 (40,070.67 and 229,099.60) make up the item of "Cabin Creek 269,-170.27" in Exhibit 43, which, as already stated, was oil not gathered by plaintiff and, therefore, not included as intrastate commerce under the decision of the Supreme Court of Appeals. Omitting these two items, this table, Exhibit 65, may be condensed as follows, all destinations being outside of the State, to wit:

Plaintiff's Exhibit 65 (Condensed).

Consignors	Destination	Barrels
South Penn Oil Co.	New Jersey, Pennsylvania & N. Y. points..	3,630,523.47
Carter Oil Co.	New Jersey points.....	401,772.44
Hope Nat'l Gas Co.	New Jersey points.....	301,325.76
Pittsburgh Oil Ref'g Co.	Coraopolis, Pa.	34,897.41
The Island Petroleum Co.	Neville Island, Pa.	199.33
	Total	4,368,718.41

Intent Established by Evidence.

The intention of all these consignors to have transported to their consignees outside of the State, all the oil shown in this table, or "a like amount of oil of the same grade," is established by the evidence, as shown below.

(c) *Carter Oil Company.* Ware, Treasurer of this Company, (Record, 508-11) said: The company bought no credit balances and handled no oil except that of its own production, all of which it delivered to the Eureka (508). At the time of such delivery and even before the oil came out of the ground, the Carter Oil Company intended to tender all the oil it produced to the Eureka for transportation to consignees at New Jersey points, and it did so tender the same weekly (509-10). This was done in pursuance of "arrangements" and "agreements" with the consignees, whereby all the oil which the Carter Oil Company produced in West Virginia was to be shipped to the same consignees. (509-11). *The Carter Oil Company delivered no oil to the Eureka which was destined to points within* the State of West Virginia. (510).

The statement in the opinion of the Supreme Court of Appeals that the Carter Oil Company bought "credit certificates," meaning credit balances, (doubtless a slip) is entirely without support in the evidence. In such a case, this Court will review the evidence on the point. (See Assignment of Error No. 9.)

Southern Pacific Co. v. *Schuyler,* 227 U. S., 601-611.

North Carolina R. R. Co. v. *Zachary,* 232 U. S., 248, 259.

(d) *Hope Natural Gas Company.* Beardsley, Treasurer of this Company (Record, 512-15) said: his company produced oil in West Virginia during the twelve months in question, all of which oil it delivered into the lines of The Eureka Pipe Line Company (512). At the time of such delivery, it

was the purpose and intention of his company so to deliver all of it to be forwarded through pipe lines to consignees at New Jersey points (513). It tendered its oil weekly (512). This was done because the oil had been sold to these consignees (513-14). It is clear from the witness's testimony that his company purchased neither oil nor credit balances and that none of the oil produced by it was destined to points within the State.

(e) *South Penn Oil Company.* Young, President of this company, (Record, 406-15), said: The principal business of his company was the production of oil, all of which it delivered into the lines of the Eureka; in addition to which it bought from other producers their Eureka credit balances,—that is to say, the amounts of oil standing to their credit on the books of The Eureka Pipe Line Company (406). During the twelve months in question, except for stated amounts delivered under standing agreements within the State to the Parkersburg and St. Mary's refineries, and except some small deliveries for account of the Pure Oil Company, all the rest of the oil produced or purchased by the witness's company was tendered weekly to the Eureka (407) for transportation to regular customers in Pennsylvania, New York and New Jersey, to whom it was his company's intention, even before the oil was produced or purchased, that the oil, or a like quantity of the same grade, should eventually go (409-10, 414). It had for a long time been the practice of the South Penn Oil Company to ship to these same consignees in other states all the oil which it produced or bought and which was not delivered to the Parkersburg or St. Mary's refineries or to the Pure Oil Pipe Line Company for account of the Pure Oil Company (409-10).

(f) With reference to the small amounts specified in Plaintiff's Exhibit 65 (page 20 above), as consigned by the Pittsburgh Oil Refining Company and The Island Petroleum Company, there is no express testimony as to the intention of the consignors; but in view of the fact that these concerns

consigned the oil to themselves at Pennsylvania points, it may fairly be presumed that from the beginning, the oil was destined to those points. In any event, the total of their consignments was too inconsiderable to affect the general conclusion, being only about one-half of one per cent. of the total consignments shown in Plaintiff's Exhibit 65.

(g) The same intention is shown as to the oil delivered to the Pure Oil Pipe Line Company and West Virginia Pipe Line Company. Ellis, President of the latter company, (Record, 231-2), testified that his company, having acquired title to the oil, then ordered the Eureka to deliver the oil to his company at Littleton; and that, at the time of so ordering these deliveries, his company had "an *intention* to obtain" the oil, for the use of a number of refineries in Pennsylvania (232), some of which were controlled by stockholders of his company but others were not so controlled (245): and the oil was in fact all delivered to these refineries (242). None of the oil was sold, delivered or used in West Virginia (244). Breiner, Superintendent of the Pure Oil Pipe Line Company, testified that all the oil received by his company from the Eureka was immediately moved out of the State and transported to the Pure Oil Company at Marcus Hook, Pennsylvania (251, 275); his first knowledge that any delivery was to be made to his company by the Eureka would be a notice from the consignee (Pure Oil Company) "that *they had purchased so much oil to be delivered to us,* (by the Eureka) *to receive for them and deliver to them at the destination* (Marcus Hook)." This was the regular course of business (252).

(h) But these various shipments and deliveries comprise all the Pennsylvania grade oil gathered by plaintiff-in-error in West Virginia and delivered by it to connecting carriers to be transported out of the State, which is all the oil the status of which is in dispute here.

Thus:

Oil shown in Exhibits 43 and 65.....	$4,368,718.41
Oil delivered to Pure Oil Pipe Line Co. and West Virginia Pipe Line Co. (Plff's Ex. 4, Sheet 1, Record, 664)...	638,590.79
Total	$5,007,309.20

And since the Court below has found as matter of law that *delivery out of a common stock of "a like amount of oil of the same grade in lieu of that received, is the equivalent in law of the delivery of the very oil received"* (Record 718), it is immaterial that the shipper's intention referred to above may have been only that there should be transported and delivered to the consignee in another State "a like amount of oil of the same grade."

12. If it be claimed, as to the oil delivered to the Pipe Line Company by producers whose credit balances for the same were afterwards purchased by one of the consignors, that no definite intention to ship the oil in interstate commerce is shown until after such purchase of the credit balances, this is the answer:

Under the construction put upon the pipe line act of West Virginia, by the Court below, the oil delivered is in contemplation of law the "very oil received." (Record, 718.) This assumes that the identity of the oil is in law preserved throughout its entire journey, which could not be the case unless the oil were forwarded by a particular conduit which would carry the oil directly to its destination without its being intermingled with other oil in the Eureka's system—a thing, of course, impossible in actual practice. But, even were it possible, the proper conduit could not be selected nor the oil started by the correct route, unless the destination of the oil were known. Hence, the oil received

from the producer must be regarded in law as if held at the point of its reception until instructions are received either from the producer himself or from his purchaser, as to its shipment and destination. Only then, in contemplation of law, does the transportation (and hence the commerce) begin. But until the transportation begins, it is immaterial what the intention of the owner is. (*Coe* v. *Errol*, 116 U. S., 511.) The position, in contemplation of law, is the same as that of a bale of goods delivered to a carrier for transportation, but without instructions as to how or where it is to be sent and which is placed by the carrier in its warehouse at the point of reception, to await such instructions. Transportation has not begun; therefore, commerce has not begun and intention is immaterial.

The Gathering Charge.

13. All of the oil gathered by plaintiff-in-error and transported out of the state was subject to a gathering charge of 20 cents per barrel, in addition to a pro rata proportion of the through tariff rate under a separate tariff filed with the Interstate Commerce Commission. (Record, 333, 404-5.)

(a) The 20 cent charge was made under authority of I. C. C. tariff No. 51 (Plff's. Ex. 35, Record, pp. 666-7), which was filed both with the Interstate Commerce Commission and with the Public Service Commission of West Virginia. It is styled a "Local Tariff," by which is meant only "that this is not a joint tariff. It is simply a tariff of the Eureka Pipe Line Company" (Towl, Record, 469). This tariff is expressly made subject to such terms as are *"lawfully on file with the Interstate Commerce Commission as to interstate traffic* and with the Public Service Commission of West Virginia, as to intrastate traffic providing for *re-consignment."* This language clearly contemplated that interstate as well as purely intrastate shipments were to be made under this tariff,

a point emphasized by the use of the word "re-consignment." (Plff's. Ex. 35.) The transportation of oil delivered within West Virginia, was, of course, purely intrastate; but oil transported out of the State was in interstate commerce from the inception of its journey, though the Pipe Line Company was permitted by the Interstate Commerce Commission to collect the gathering charge on this oil also, as well as a pro rata part of the through rate. Nor is any weight to be attached to the statement in the tariff that "The rates named in this tariff are for the intrastate transportation of crude petroleum oil, &c." Any movement of commodities within a state is *"intrastate transportation,"* though that transportation may be, and in innumerable instances is, a part of *interstate* commerce. In other words, transportation and commerce are not necessarily synonymous terms.

(b) The Court below may have been influenced by the statement in this tariff that the 20 cent charge is "For gathering and transporting oil from wells to *delivery points* within the State of West Virginia." But the only such "delivery points" shown in the evidence are those where the three refineries are situated, together with the stations of the West Virginia and Pure Oil Pipe Line companies. (Record, 81.) As already stated, the points from which "tenders" were technically made, (all of which are enumerated in Plaintiff's Exhibit 43, discussed above) are not "delivery points." They are referred to in the testimony as "tariff points." (Swisher, Record, 375.) No oil whatever was delivered to any consignee at any of these points, except a negligible quantity (less than 50 barrels in all), for lubricating purposes delivered, a barrel or two at a time, to gas companies at Downs. (Kenney, Record, 81-2). The charge of 20 cents thus originally applied to oil carried from wells to "delivery points"—that is, points at which deliveries were

made within West Virgina—is permitted by the two Commissions to be applied also to oil gathered within, but transported out of, that state.

Specification of Errors.

The errors assigned are set forth in full in the Record, pages 746-753.

It is here respectfully submitted that the Supreme Court of Appeals of West Virginia erred in the following among other particulars:

1. In making its final decree in this cause, in and by which it sustained, as to a part of the decree of the Circuit Court of Kanawha County, West Virginia, pronounced in the same cause, the motion made by the defendants below (defendants-in-error here) to reverse the said decree of the said Circuit Court.

2. In adjudging by its said final decree that the said decree of the said Circuit Court, [in so far only as it holds and decrees the Transportation Tax Act of West Virginia to be void and perpetually enjoins defendants-in-error (appellants below) from enforcing or attempting to enforce against the plaintiff-in-error (appellee below) in any manner or respect, the provisions of said Act which are applicable to "intrastate commerce as defined by the written opinion," filed by said Supreme Court of Appeals herein], be reversed, because, as defined by said written opinion, intrastate commerce was made to include a large part of the interstate business of plaintiff-in-error, so that, as construed by said Court, said Act imposes a direct burden upon interstate commerce, in violation of Section 8 of Article I of the Constitution of the United States.

3. Because, in construing the said Act as applying only to intrastate commerce carried on by the plaintiff-

in-error, as the same is defined in said written opinion, the Court in substance declares that the Legislature of West Virginia intended by said Act to impose a tax not on intrastate commerce as defined by the law, but on a specific part of the interstate business of plaintiff-in-error.

4. Because the amount of the tax which, by the decision of said Court, is made to apply to a part of the interstate business of plaintiff-in-error is, by the language of the Act, made to fluctuate with the volume of the business done, so that the Act, under said construction, imposes a direct burden upon interstate commerce, in violation of the Section and Article aforesaid.

5. In holding and decreeing that the business carried on by the plaintiff-in-error, in gathering oil produced in West Virginia, consisted in gathering such oil and transporting it to central points for the purpose of shipment, and that such business was intrastate commerce and was subject to the tax sought to be collected by the defendants-in-error, under the authority of said Act; whereas the record shows that the whole of the oil so produced and gathered during the period involved in this case, except 1,239,099.55 barrels thereof, was transported in a continuous stream without stoppage or delay other than those incident to transportation, from the point and time where and when such oil was received by the plaintiff-in-error, until it was delivered at or near the State line of West Virginia to a connecting carrier, by which it was further transported into or across the State of Pennsylvania; so that the whole of said transportation, with the exception noted, was interstate commerce; and therefore said Act, as construed by said Court, imposes a tax upon said commerce, in violation of Section 8 of Article I of the Constitution of the United States.

6. In holding and decreeing to the effect set forth in specification 5 foregoing, because all the oil in question produced and gathered by the plaintiff-in-error within substantially the northern one-third part of the State of West Virginia, during the period involved, was transported through and out of the State in continuous interstate transportation, and under existing conditions could not have been delivered to or remained at any point within said State, as all persons concerned well knew, and because the producers of said oil, as well as plaintiff-in-error, fully intended that all of such oil should be transported out of the State in interstate commerce.

7. In reversing the decree of the Circuit Court of Kanawha County, West Virginia, made in said cause, to the extent that the defendants-in-error were, by said decree, enjoined from collecting upon the business of the plaintiff-in-error (so far as such business consisted in the transportation of oil produced and gathered in West Virginia, with the exception noted in specification 5 foregoing,) the tax sought to be imposed by said Transportation Tax Act, and in holding and decreeing such Act, as construed by the said Supreme Court of Appeals, to be valid as to all such business of plaintiff-in-error, because the evidence shows that all such business, with the said exception, was interstate commerce.

8. In holding and decreeing that a large part of the credit certificates given by the plaintiff-in-error in exchange for oil delivered to it for transportation through its lines, during the twelve months ending July 1, 1919, were bought by the Carter Oil Company. (Record, 718.)

9. In finding, holding and decreeing that the oil produced in West Virginia and transported by plaintiff-in-

error during the twelve months ending July 1, 1919, was "gathered together by plaintiff-in-error at central points, from which it" was "ultimately shipped to its destination, some of it within and some of it without the State," (Record, 717), and that "the business is carried on generally before the oil is destined to any particular point, but while it is simply being gathered up and collected in such quantities as that the owners thereof may find a ready market for it, and then after it is so sold it is transported by the pipe line company through its trunk lines to the point of destination, in most instances without the State of West Virginia." (Record, 710).

10. In finding, holding and decreeing the following:

"It cannot be denied that when the oil is delivered to the pipe line company (plaintiff-in-error), it has no fixed destination. It is known that beyond all reasonable probability (doubt) a large part of it ultimately will go outside of the State, and a considerable part of it be used within the State at local refineries, but as to what particular producer will sell his oil to the local refineries, and as to which particular producer will ship his oil without the State, is not determined until after the oil is gathered, and the gathering charge above referred to has accrued to the pipe line company (plaintiff-in-error)."

11. In holding and decreeing that

"Commodities in transit cannot be said to be interstate commerce until it is definitely determined that they are destined to points without the State, even though past experience and the course of business in which the owner of such commodity is engaged may justify the assumption that a large part thereof will ultimately be transported beyond the borders of the State."

12. In holding and decreeing that

"A pipe line company doing business in this State which receives the oil produced at numerous wells and transports the same to its main pipe lines or tanks within the State, and makes a definite charge for such service, is engaged in intrastate commerce, as to the oil so transported, where it appears that at the time such oil was so received and transported to its main lines or tanks by it, it was not definitely determined that the same was destined to points without the State, even though past experience may indicate and justify the belief that a large part of the same will ultimately be shipped without the State in interstate commerce."

13. In holding and decreeing that, under the state of facts found by the Court and set forth in its opinion and decision, and except as to the portion of such oil so produced and gathered which was delivered within the State of West Virginia, the process of gathering and transporting oil produced in West Virginia, for which service the charge of twenty cents was made by the plaintiff-in-error during the period involved, was engaging in the business of intrastate commerce.

ARGUMENT.

POINT I.

The physical oil of Pennsylvania grade produced in West Virginia and "gathered" by plaintiff-in-error, during the twelve months ending July 1, 1919, having been transported without delays other than those incident to transportation, and without change in form, in a continuous stream through and out of the state (except as to relatively small portions thereof diverted *en route* to refineries within the state,) and such transportation having been a "typical, constantly recurring course" of business, so much of such oil as actually passed out of the state was in interstate commerce from the moment it was received by the plaintiff-in-error, and, if that be important, producers thereof will be presumed to have intended that result.

1. Irrespective of any proof of intent, the facts recited in the foregoing point show interstate commerce from the time the oil was received.

The tax is levied upon the carrier and not upon the shipper, and the character of the commerce, so far as the physical oil is concerned, must be judged from the course of dealing of the carrier. Obviously the carrier knew from long experience that more than 80 per cent. of the total amount of oil received by it must be transported to the gateways leading to Pennsylvania, in order to fill the constantly recurring contracts of shipment, which since 1911, had called for at least that percentage, and for most of the time a much larger percentage, of the total amount of oil for the filling of interstate consignments. (Towl, Record, 621.) As stated, the carrier received the oil into its system as into a common receptacle and immediately transported it in a continuous stream, without distinction of ownership, and, so far as the physical oil was concerned, without reference

to the intention of the shipper, except as to what may be called the resultant aggregate intention of the whole body of shippers, which from long experience the carrier knew to be that over 80 per cent. of the oil mentioned should be devoted to interstate shipments. This was the "typical, constantly recurring course" of business.

(a) The mere transportation of a commodity across a state line, even though not for commercial purposes, without more, is interstate commerce.

In *Western Union Tel. Co.* v. *Speight,* 254 U. S., 17, (adv. sh.) decided at the last term of this Court, Mr. Justice Holmes says at page 18:

> "The transmission of a message through two states is interstate commerce as a matter of fact. *Hanley* v. *Kansas City Southern Ry. Co.,* 187 U. S., 617. The fact must be tested by the actual transaction. *Kirmeyer* v. *Kansas,* 236 U. S., 568, 572."

See also *United States* v. *Hill,* 248 U. S., 420, 423-4.

In *Chicago, R. I. & Pa. Ry. Co.* v. *Wright,* 239 U. S., 548, an employee of the railway company was killed in a collision. One of the locomotives involved was a road engine being taken to a repair shop in another state, for the purposes of repair only. Negligence was shown. Held that the employee was engaged in interstate commerce, Mr. Justice VanDevanter saying, at page 550 (italics ours):

> "It is entirely clear that taking the road engine from Phillipsburg, Kansas, to Council Bluffs, Iowa, was an act of interstate commerce, and that the intestate, while participating in that act, was employed in such commerce. *That the engine was not in commercial use but merely on the way to a repair shop is immaterial. It was being taken from*

one State to another and this was the true test of whether it was moving in interstate commerce."

In *North Carolina R. R. Co.* v. *Zachary,* 232 U. S., 248, at page 259, Mr. Justice Pitney said:

* * * "The hauling of empty cars from one state to another is, in our opinion, interstate commerce within the meaning of the Act."

In the *Lottery Case,* 188 U. S., 321, at page 345, Mr. Justice Harlan said:

"Undoubtedly, the carrying from one State to another by independent carriers of things or commodities that are ordinary subjects of traffic, and which have in themselves a recognized value in money, constitutes interstate commerce."

In *International Text Book Co.* v. *Pigg,* 217 U. S., 91, at page 107, Mr. Justice Harlan quoted with approval the statement of Judge Sanborn, in the Court below, that:

"Importation into one State from another is the indispensable element, the test, of interstate commerce * * *."

(b) The fact that a relatively small percentage of the total amount of the oil in question received by petitioner was diverted *en route* and delivered within the State, in no way affected the interstate character of the main stream of oil.

In *Ohio Railroad Comm.* v. *Worthington,* 225 U. S., 101, 106-8, coal was diverted *en route* to the port of shipment and sold within the State, and it was not known at the mines what particular coal would be so diverted. The interstate rate was applied solely to such coal as was in fact placed upon vessels for carriage

beyond the State. It was held that *the fact governed*, and that all the coal which did finally leave the State was to be regarded as in interstate commerce "from the beginning to the end of its transportation."

Certain language in the opinion in that case is strikingly applicable here. Thus, at pages 106-7 (italics ours):

> "It appears that all the coal shipped at the *lake-cargo* rate remains on the cars of the complainant until unloaded into a vessel, *unless it should be diverted en route and devoted to some other purpose*, but in that case, the lake-cargo rate does not apply. *For instance, if it should be diverted to commercial use at Huron*, the rate on commercial coal, which is $1.00 a ton, would govern."

Again, at page 108 (italics ours):

> "The so-called 'lake-cargo coal' is necessarily shipped beyond Huron. If it stops there, another and higher rate applies. * * * this seventy-cent rate applies solely to *such coal as is in fact placed upon vessels for carriage to beyond the state points* * * *."

(c) Nor is the interstate character of the main stream of oil affected by the fact that the physical oil diverted to the West Virginia refineries was previously intermingled in the stream with that actually transported out of the State, so that in advance it could not be determined what actual physical oil would reach either destination.

In *Western Oil Ref'g Co.* v. *Lipscomb*, 244 U. S., 346, oil was shipped in a tank car in bulk, the car containing "just the quantity of oil * * * required to fill the orders from the two places * * *" to which the oil was destined. (P. 347.) At the first stopping-place, oil was withdrawn from the common stock of oil in the car to fill the orders at that place, while the re-

mainder of the oil was rebilled to the second place, where it was discharged. But the total amount of the oil had necessarily been mingled together in the tank car and it cannot be said that any particular identical oil was destined to go to one place rather than to the other, any more than it could be said in the instant case that the physical oil had a "fixed destination." (Record, 718.) Yet this Court held in the *Lipscomb* case that all the oil was in interstate commerce until the last delivery. The fact that a certain amount of oil from the common stock had been withdrawn at the first stopping place in no way affected the conclusion that the part remaining continued in interstate commerce.

Some emphasis seems to be laid, in the opinion in the *Lipscomb* case, upon the fact that the oil, as already stated, was shipped to fill orders previously taken. These orders may have been, though the opinion does not so state, in the nature of contracts, and it may be argued that this distinguishes the *Lipscomb* case from the instant case. We think otherwise. As shown in the Statement of Facts (*supra*, pp. 21-22) most, if not all, of the oil in question which was shipped out of the State, was so shipped in accordance with agreements or with customs which were tantamount to standing orders or contracts. (Record, 509-11; 513-14; 407-10; 231-2; 251-2.)

In *Penna. Gas Co.* v. *Pub. Service Comm.*, 252 U. S., 23, 27, 28, natural gas was piped from its source in Pennsylvania into the State of New York. On the way, some of the gas was delivered (apparently out of a common stock) to consumers in the cities of Warren, Corey and Erie, Pennsylvania, while the remainder of the gas was piped to consumers in New York State. It was held that the gas which reached the New York consumers was in interstate commerce "from the beginning to the end of its transporta-

tion." The distribution of a part of the gas within the State of Pennsylvania, while the balance was being transported into New York, made no difference in the Court's conclusion.

See also

People ex rel. Penn. Gas Co. v. *Saxe*, 229 N. Y., 446, 450-51.

(d) The transportation described in the above Point I was emphatically a "typical, constantly recurring course" of business, having continued since 1911, during which time all but a small percentage (from 6 to 14 per cent. in the period 1911-1917) of the Pennsylvania grade oil in question had been transported in the "stream" out of the State (Towl, Record, 621). The effect of such a continuous course of business in determining the character of the commerce is well settled.

Swift & Co. v. *United States*, 196 U. S., 375.
Texas & N. O. R. R. Co. v. *Sabine Tram Co.*, 227 U. S., 111, 120, 130.

In the Texas case, Mr. Justice McKenna said at page 120 (italics ours):

> "The shipments in controversy * * * constitute a large and *constantly recurring course* of foreign commerce passing out through the port of Sabine."

And again, at page 130:

> * * * "The shipment was not an isolated one but typical of many others, which constituted a commerce amounting in the year 1905 to 14,667,670 feet of lumber and in the year 1906, 39,554,000 feet."

(e) In *Bracht* v. *San Antonio &c. Ry. Co.*, 254 U. S., 489, 491, (adv. sh.) the test of the transportation was whether it was part of an interstate movement "*reason-*

ably to be anticipated." In the instant case, where over eighty per cent. of the whole amount of the oil in question left the State and had done so for years to the knowledge of all parties, it would seem that it must be "*reasonably anticipated*" that the oil was going into interstate commerce, except as to amounts "diverted *en route.*"

2. There is sufficient proof of intent, if that be important. The fact that the great bulk of the oil in question would go out of the State was well known to everyone,—producer, shipper and carrier. The opinion of the Court below says (Record, p. 718):

> "When the oil is delivered to the pipe line company * * * it is known that beyond all reasonable probability (doubt) a large part of it ultimately will go outside of the State."

That intention on the part of an owner may be presumed from the manner in which the pipe line business is conducted, see the case of *Bailey* v. *Bensley*, 87 Illinois, 556, where the Court said at page 559:

> "A person who deals in a particular market must be taken to deal according to the known, general and uniform custom or usage of that market; and he who employs another to act for him at a particular place or market, must be taken as intending that the business to be done will be done according to the usage and custom of that place or market, whether the principal in fact knew of the usage or custom or not."

POINT II.

In any event, all the Pennsylvania grade oil produced and gathered by plaintiff-in-error in West Virginia, north of an east and west line drawn through Elm Run, with negligible exceptions, and also all such oil produced and gathered in and around Sand Fork, Gilmer County, and along the pipe line of plaintiff-in-error running north from Sand Fork to Downs, all in said state, during the twelve months ending July 1, 1919, was transported solely in interstate commerce from the inception of its journey, and in view of the evidence, it will be presumed that the producers of such oil intended that result.

The facts in support of this point are briefly set forth in sub-division 10 of the Statement of Facts (page 15, *supra*). They show that all the oil referred to in the above Point (with the exceptions noted) went out of the State and could have gone nowhere else. The exceptions are of the oil delivered to St. Mary's refinery, which oil was produced in the neighborhood of Eureka, and the negligible deliveries of less than fifty barrels at Downs, which need not be further considered.

The absence of any refineries within this territory must have been well known to all producers of oil and they must have delivered their oil into the lines of plaintiff-in-error with full knowledge that its only possible destination was some point outside of the State of West Virginia. Whether, therefore, we consider this oil from the standpoint of the actual general stream of oil which went through and out of the State without any substantial stop, of which stream this oil was a part, or whether it be considered from the standpoint of the intention of its owners, the result is the same, and the oil must, we submit, be considered to have been in interstate commerce from the commencement of its journey.

POINT III.

The Pennsylvania grade oil produced in West Virginia, gathered by plaintiff-in-error and transported through and out of the State, having at the very outset of its journey, been delivered to a common carrier (to wit, the plaintiff-in-error), and having never ceased to be in the custody of a common carrier until it was transported into the State of Pennsylvania, and it being well known to producers that such would be the case, except as to "oil diverted *en route*," the oil must be held, upon leaving the tanks of the producers, to "have been started upon transportation to another State in a continuous route or journey," and, therefore, to have been in interstate commerce "from the very minute that it was delivered" to the plaintiff-in-error.

Coe v. *Errol*, 116 U. S., 517, 527.
Bacon v. *Illinois*, 227 U. S., 504, 515-16.
General Oil Co. v. *Crain*, 209 U. S., 211, 229.
Standard Oil Co. v. *Graves*, 249 U. S., 389, 396.
Ohio Railroad Comm. v. *Worthington*, 225 U. S., 101, 105-6.
Opinion Supreme Court of Appeals (Record, 718).

The fact, undisputed and indisputable, that at the very outset the oil in question was delivered by the producers to a common carrier (plaintiff-in-error) and that it never for a single moment ceased to be in the custody of that common carrier until delivered to a connecting carrier, by which without delay it was transported out of the State (no change of form having taken place), is of vital significance under the authorities.

The learned Court below relies upon *McCluskey* v. *Marysville & Northern Ry. Co.*, 243 U. S., 36; and *Arkadelphia Co.* v. *St. Louis S. W. Ry. Co.*, 249 U. S., 134. It is respectfully submitted that neither of these de-

cisions supports the conclusion arrived at by the Court below. On the contrary, they support our present contention.

In the *McCluskey case* the lumber was carried to tide-water by the shippers' own railroad, and after part of it had been sold, the rest was towed by the shipper to the mills. *No part of the lumber was ever delivered to a common carrier until after it had been manufactured into lumber.* (Page 39.)

In the *Arkadelphia* case, what was shipped in the first instance was "rough material." When this rough material left the woods, a bill of lading was issued from the woods to the mill, upon reaching which the *material passed out of the custody of the carrier* and was manufactured into various articles. These were retained until dried, and the process of manufacturing and drying occupied about five months. Mr. Justice Pitney said, at page 151, in holding that the movement to the mill was not in interstate commerce (italics ours):

> "It is not merely that there was *no continuous movement* from the forest to the points without the State, but that when the rough material left the woods it was not intended that it should be transported out of the State, or elsewhere beyond the mill, until *it had been subjected to a manufacturing process that materially changed its character, utility, and value. The raw material came to rest at the mill,* and after the product was manufactured it remained stored there *for an indefinite period*—manufacture and storage occupying five months on the average—for the purpose of finding a market. Where it would eventually be sold no one knew."

Mr. Justice Pitney cites *Bacon* v. *Illinois,* 227 U. S., 504, 515-16. This is a significant citation because, in the latter case, grain, which was the subject of transportation, was removed from the custody of the carrier and placed in a private elevator, and it is upon this point

precisely that Mr. Justice Hughes, in his opinion in that case, based the position that the interstate journey had been broken (227 U. S., 516).

We submit that there is nothing in the facts of the instant case corresponding to the situation shown in the *Arkadelphia* case. There was no long delay at any point and no change in the form of the commodity. The oil was carried unchanged, in a substantially continuous movement, from the point and time when it was first received until it left the State. It was delivered to a carrier at the outset of its journey and never left the custody of carriers until its final delivery to the consignee.

POINT IV.

In view of the contracts under which plaintiff-in-error operated and of the Pipe Line Act of West Virginia, as construed by the highest court of that state, the delivery by plaintiff-in-error to a consignee or to a connecting carrier of a like amount of oil of the same grade in lieu of that received was the equivalent in law of the delivery of the very oil received.

1. The Supreme Court of Appeals of West Virginia, in its opinion (Record, p. 718), says (italics ours):

> * * * "The agreement of the owner of the oil upon delivery is not that he shall receive back the same oil that he has delivered, but the same amount of oil of a similar grade. We think this agreement with the owner, as well as the *statute of this state*, which recognizes the right of pipe line companies to deliver a like amount of oil of the same grade in lieu of that received, is the equivalent in law of the delivery of the very oil received. The parties by their contract make it so, and the exigencies of the business, as well as the law of the land, justify the contract."

The "statute of this state," to which the Court here refers, is the Pipe Line Act of West Virginia, enacted in 1891, and re-enacted as part of the Code of West Virginia of which Section 3551 (Record, 51) provides in part that a pipe line company, "within a reasonable time" after receiving oil, "upon demand of said owner or his assigns, shall deliver to him at the point of delivery a like quantity and grade or gravity of petroleum in merchantable condition." * * *

To the same effect, Code of West Virginia, Section 3554 (Record, 52).

The Court below has thus construed the statute of its own state as meaning that the delivery of "a like quantity and grade" in lieu of that received is to be regarded for all purposes "as the equivalent in law of the delivery of the very oil received."

This construction of a state statute by the highest court of the State is binding on this Court.

Thornton v. *Duffy*, 254 U. S., 361, 368, (adv. sh).
Waters-Pierce Oil Co. v. *Texas*, 177 U. S., 28, 42-3.
Crew Levick Co. v. *Pennsylvania*, 245 U. S., 292, 294.

(2) But this construction is in harmony with other authorities, especially the grain elevator cases:

Bailey v. *Bensley*, 87 Ill., 556, 560.
National Exc. Bank of Hartford v. *Wilder*, 34 Minn., 149, 156.
Hall v. *Pillsbury*, 43 Minn., 33, 35.

In *Baily* v. *Bensley* the Court said at page 560 (italics ours):

> "The grain, on being received at the warehouse, is stored in common bins, mixed with other grain, and loses its identity, and becomes incapable of

specific designation; that amount of grain is credited to the consignee. The warehouse receipt is given to the consignee as his voucher that he has in that warehouse, *not the grain of the consignor, nor any particular grain,* but a certain number of bushels of grain of the kind and grade mentioned in the receipt, subject to his order and disposal."

In *Hall* v. *Pillsbury,* the Court referring to the deposit of grain in an elevator or general warehouse, said, pp. 35-6 (italics ours):

"The statute * * * provides (Gen. St. 1878, c. 124, Sec. 13) that 'such delivery shall in all things be deemed and treated as a bailment, and not as a sale.' *Of course, it cannot be understood from this that the depositor's title to the identical grain remains. The legislature must be taken to have had in view the way in which the business of such warehouses is, and of necessity must be, conducted.* They are constantly receiving deposits of grain, and issuing receipts for it, and as constantly taking up outstanding receipts, and removing the amounts of grain called for by them, so that perhaps the same identical grain may not remain in the warehouse a week, though the amount in store is not diminished. The declaration that the delivery shall be deemed and treated as a bailment must be taken as meaning that the depositor shall be deemed to be the owner of, and to have on bailment in the warehouse, the amount of grain that he deposits, although its identity may have been lost by commingling with other, the like kind of grain, and although not a kernel of the identical grain deposited still remains. As fast as grain is removed and other grain is put into the common mass, the new grain takes the place of that originally deposited, and is appropriated to the contract of bailment, so as to become the property of the depositor."

POINT V.

In view of such construction by the Court below of the Pipe Line Act of West Virginia, and of the evidence that the owners of the oil in question intended to ship to consignees without the State certain amounts of the oil delivered to plaintiff-in-error, or like amounts of oil of the same grade, and that such like amounts of such oil were actually moved in substantially continuous transportation by plaintiff-in-error and its connecting carriers (being at all times in the custody of a common carrier) through and out of the State and were delivered there to such consignees, for account of the owners of the oil received by plaintiff-in-error, it will be presumed, as to an amount of such oil so gathered equal to the amount of such oil actually so delivered to such consignees, that before the same was received by the plaintiff-in-error, it was definitely determined that such oil so received was destined to points without the state and its transportation by plaintiff-in-error was, therefore, all in interstate commerce.

1. The proof as to the intention of all the owners of all the oil in question has been fully set forth above (pages 20-22 of this brief).

The effect of such intention is controlling, if the character of the commerce is otherwise in doubt.

Southern Pac. Terminal Co. v. *Int. Commerce Commission*, 219 U. S., 498, 526-7.

Ohio R. R. Comm. v. *Worthington*, 225 U. S., 101, 110.

Texas & N. O. R. R. Co. v. *Sabine Tram Co.*, 227 U. S., 111, 125-6.

R. R. Comm. of Louisiana v. *Texas & Pac. Ry. Co.*, 229 U. S., 336, 340-342.

Western Oil Refining Co. v. *Lipscomb*, 244 U. S., 346, 348-9.

In the Worthington case, the general intention of the shippers of the coal was held to be decisive, notwithstanding it was clearly in the contemplation of the parties that a part of the coal, and an undetermined and indistinguishable part, should be diverted *en route* to local use. In all the cases, the intention of the shippers prevailed over the apparent break in the journey caused by re-billing.

2. The statement in the opinion of the Supreme Court of Appeals, (Record 718), to the effect that the oil when delivered to the Pipe Line Company "has no fixed destination," and that "as to what particular producer will sell his oil to the local refineries, and as to which particular producer will ship his oil without the state, is not determined until after the oil is gathered and the gathering charge above referred to has accrued to the Pipe Line Company (plaintiff-in-error)," if it be regarded as a finding of fact, is one as to which this Court may properly review the evidence, because the conclusion of law as to a Federal right, to wit, as to the right of plaintiff-in-error to be free from State taxation on transportation carried on by it in interstate commerce, is so intermingled in this finding, that it is necessary, for the purpose of passing upon the said Federal question, to analyze and dissect the facts upon which said finding is claimed to be based, and to review such finding.

See Eleventh Assignment of Error.

Creswill v. *Knights of Pythias*, 225 U. S., 246, 261.

POINT VI.

Re-Billing.

Even if the view of the Supreme Court of Appeals were adopted, that the gathering charge of twenty cents per barrel covered the service of "gathering the oil together and conveying it to its (plaintiff-in-error's) trunk lines" and that "for the transportation of the oil through its main pipe lines, after so gathering it, to the point of destination," the plaintiff-in-error charged the further rate allowed by the Interstate Commerce Commission (Opinion, Record p. 718), which is not admitted, still this would only be a case of "re-billing *en route*" and such re-billing would be immaterial in view of the intention of the parties and of the general course of business.

Ohio R. R. Comm. v. *Worthington,* 225 U. S., 101, 110.

Texas & N. O. R. R. Co. v. *Sabine Tram Co.,* 227 U. S., 111, 126.

Western Oil Refining Co. v. *Lipscomb,* 244 U. S., 346, 348-9.

Atchison, Topeka & Santa Fe Ry. Co. v. *Harold,* 241 U. S., 371, 376.

South Covington Ry. v. *Covington,* 235 U. S., 537, 545.

1. In the Lipscomb case, Mr. Justice Van Devanter, at pages 348-9, used language which may accurately be applied to the instant case. He said (italics ours):

> * * * "This is not a case where at the time of the original billing the shipper had no purpose to continue the transportation beyond the destination then indicated, * * *. On the contrary, it is a case where the shipper intended from the beginning that the transportation should be continued beyond the destination originally indicated and where there is nothing which requires that decisive effect be

given to the bill of lading. Ordinarily the question whether particular commerce is interstate or intrastate is determined by what is actually done and not by any mere billing or plurality of carriers, and where commodities are in fact destined from one State to another, a re-billing or re-shipment en route does not of itself break the continuity of the movement *or require that any part be classified differently from the remainder.* As this court often has said, it is the essential character of the commerce, not the accident of local or through bills of lading, that is decisive."

So also in the *Sabine Tram* case, where Mr. Justice McKenna said at page 126:

> "The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries."

In *Bracht* v. *San Antonio &c. Railway Co.,* 254 U. S., 489, 491, (adv. sh.) the test of the re-billing was whether the carriage between points in the same State "was really but part of an interstate or foreign movement *reasonably to be anticipated* by the contracting parties." (Italics ours).

In *South Covington Ry.* v. *Covington,* 235 U. S., 537, at page 545, Mr. Justice Day said:

> "This court has repeatedly held that whether given commerce is of an interstate character or not is to be determined by what is actually done, and if the transportation is really and in fact between States, the mere arrangements of billing or plurality of carriers do not enter into the conclusion."

2. But it is not necessary to interpret the transaction as one of re-billing. The fact was otherwise. It was a case of a *double charge for one continuous service.* The opinion speaks (Record, 717) of gathering the oil "*at central points,* from which it is ultimately shipped

to its destination" and again (Record, 719), of "transporting it (the oil) to the *central points* for the purpose of shipment." We submit that these statements, whether or not they be regarded as findings of fact, are without foundation in the evidence. It was repeatedly stated by the witnesses, both on direct and on cross-examination, that the oil was not held at all and there is no evidence to the contrary.

See testimony quoted and cited above at pages 12-14 of this brief and see discussion as to the "central points," as so denominated by the Court below, at pages 17-18 above.

The statements in the opinion of the Court below, (referred to above) in regard to transportation to and from "central points," are too informal to be regarded as findings of fact. But if they were such findings, this Court might properly review the evidence on the point, first, because there is good "ground for the insistance that a Federal right has been denied as the result of a finding that is without support in the evidence," (*Interstate Amusement Co.* v. *Albert,* 239 U. S., 560, 566-7), and, second, because the conclusion of law as to a Federal right, to wit, as to the right of plaintiff-in-error to be free from state taxation on transportation carried on by it in interstate commerce, is so intermingled with these findings that it is necessary to analyze and dissect the facts upon which the findings are claimed to be based and to review the findings.

Tenth Assignment of Error.

Creswill v. *Knights of Pythias,* 225 U. S., 246, 261.

Southern Pac. Co. v. *Schuyler,* 227 U. S., 601-611.

North Carolina R. R. Co. v. *Zachary,* 232 U. S., 248, 259.

POINT VII.

Where intrastate and interstate transactions are so interwoven as in the instant case, the authority of Congress extends to the whole situation.

This Court has held specifically that the mixture of commodities in interstate and intrastate commerce will not take away the control of Congress over the commodities in interstate movement, even where the two cannot be separated.

Thus, in the Minnesota Rate Cases, 230 U. S., 352, where Mr. Justice Hughes said, at pages 381-2 (italics ours):

> "In the case of each company, the movement of interstate and local traffic takes place *at the same time, on the same rails,* with the same employes, and *largely by means of the same trains and cars.* There has never been a separation, and *it is impracticable in the exercise of fair economy to make a separation, between the interstate and intrastate business in the case either of freight or of passengers.* By far the larger part of the traffic is interstate."

He concludes at page 399 (italics ours):

> "The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; *and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. * * * The execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere.*"

To the same effect:

Southern Railway Co. v. *United States,* 222 U. S., 20, 26-7.

Erie Railroad Co. v. *Winfield,* 244 U. S., 170, 173.

Phil. & Reading Ry. Co. v. *Polk U. S. Adv. Ops.,* 1920-21, page 630, 632.

POINT VIII.

The decree of the Supreme Court of Appeals, in so far only as it modified the decree of the Circuit Court of Kanawha County, and except as to Pennsylvania grade oil produced in West Virginia, gathered by plaintiff-in-error, transported in the stream of oil and diverted *en route* to refineries within the State, should be reversed and in all other respects should be affirmed; and the said decree of said Circuit Court should be modified by excepting therefrom only the oil so diverted as aforesaid, and as so modified should be affirmed.

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Attorneys for plaintiff-in-error (petitioner).

APPENDIX I.

THE LAW—Chapter 5, Acts Extraordinary Session of the Legislature of 1919, State of West Virginia.

[Passed March 31, 1919. In effect ninety days from passage. Approved by the Governor April 1, 1919.]

AN ACT to levy a privilege tax on any person, firm or corporation engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the State Tax Commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the State Tax Commissioner hereunder.

Be it enacted by the Legislature of West Virginia:

Section 1. No person, firm or corporation, hereinafter called company, after the first day of July, one thousand nine hundred and nineteen, shall engage in or continue in the business of the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, without the payment of an annual privilege tax hereby imposed for engaging in such business; *provided, however,* that nothing contained in this act shall apply to any person, firm or corporation engaged in the business aforesaid where the crude oil, petroleum or distillates thereof, or natural gas, is by the entire system of such person, firm or corporation, transported a distance of less than ten miles.

Sec. 2. Every person, firm and corporation engaged in this state in the transportation of either crude oil or petroleum, or the products and distillates thereof, or of natural gas, or both, by means of pipe lines for sale to consumers within or without the state, or use within or without the state in the making of any products derived

therefrom, shall pay to the state, as an annual privilege tax for engaging in such business in the state, two cents for each barrel of crude oil or petroleum, or the distillates thereof, and one-third of one cent for each thousand cubic feet of such natural gas as is so transported or conveyed within this state. *Provided*, that only one such tax, annually, shall be required to be so paid.

Sec. 3. Every person, firm or corporation liable to tax imposed by this act, shall, within sixty days after the first day of July, one thousand nine hundred and nineteen, and within sixty days after the first day of July in each year thereafter, deliver to the State Tax Commissioner a return in writing showing the quantity of crude oil or petroleum, or the distillates thereof, or of natural gas transported or conveyed within this state during the fiscal year ending on the first day of July next preceding. Such return shall be signed and sworn to by the person making the same for himself or a partnership, and by the president, vice-president or other principal accounting officer making the same for a corporation, which return shall be in the form prescribed by the State Tax Commissioner. The State Tax Commissioner is hereby invested with full power and authority and it is hereby made his duty to prescribe forms for returns and assessments and to make, issue and put in force all necessary and needful rules and regulations for ascertaining and assessing the tax hereby imposed upon every company.

Sec. 4. The State Tax Commissioner shall ascertain and assess the tax upon the company making a return, and shall notify it of the amount of such tax by notice deposited in the post office addressed to such company at its principal office or place of business. Such ascertainment of the tax shall be final and conclusive, unless the same be appealed from in the manner following

within thirty days after such notice is so deposited. If any company fail or refuse to make return, the State Tax Commissioner shall proceed, in such manner as may be proper, to obtain the facts and information required to be furnished by such return; and to this end he may, by himself or his duly appointed agent, make examination of the books, records and papers of any such company, and may take the evidence, on oath, of any person who he may believe shall be in possession of facts or information pertinent to the subject of inquiry, which oath he or the agent so appointed by him may administer. As soon as possible after procuring such information as he may be able to do with respect to any company failing or refusing to make a return, the State Tax Commissioner shall proceed to ascertain and assess the tax upon such company, and shall notify it of the amount thereof as hereinbefore provided. And his act shall be final as to any company which refused to make a return.

Sec. 5. If any such company, making a return as provided by this act, feels aggrieved by the assessment so made upon it for any year by the State Tax Commissioner, it may apply to the Board of Public Works by petition in writing, within thirty days after the notice is deposited as provided in the preceding section, for a hearing and a correction of the amount of the tax so assessed upon it by the State Tax Commissioner, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. The board shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the petitioner shall be forthwith notified thereof; if granted, the board shall notify the petitioner of the time and place fixed for such hearing. After such hearing the board may make such order in the matter as may appear to them just and lawful, and shall furnish a copy of such order to the petitioner.

Sec. 6. No injunction shall be awarded by any court or judge to restrain the collection of all or any part of the taxes imposed and assessed under this act, except upon the ground that the assessment thereof was in violation of the constitution of the United States, or of this state; or, that the same were fraudulently assessed; or, that there was a mistake made in the amount of taxes assessed; and in case of a mistake no such injunction shall be awarded, unless application shall be first made to the Board of Public Works to correct the alleged mistake, and the board shall refuse to do so, which fact shall be stated in the bill, or unless the complainant pay into the treasury of the state all taxes appearing by the bill of complaint to be owing.

Sec. 7. Every company so assessed with taxes shall pay the same into the state treasury within sixty days after the date of the mailing of the notice of the amount thereof, or within thirty days after notification of the amount thereof, when ascertained and assessed by the Board of Public Works on appeal. All taxes assessed under provisions of this act against any such company shall constitute a debt to the state, and may be collected by action of assumpsit or appropriate judicial proceeding, which remedy shall be in addition to all other existing remedies for the collection of taxes. It shall be the duty of the State Tax Commissioner to proceed to collect such taxes with a penalty of ten per centum added thereto, if not paid when due. At the time of paying the taxes the State Tax Commissioner shall issue to the company paying the same a certificate of payment for the proper fiscal year.

Sec. 8. Any person required or authorized by law to make, sign or verify any return by this act, who makes any false or fraudulent return or statement with intent to defraud the state or defeat or evade the payment of

the tax, or any part thereof, imposed by this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars, nor more than five thousand dollars, to which fine shall be added the costs of prosecution.

Sec. 9. Any person engaging or continuing in the business aforesaid without having first secured a license, as hereinbefore provided, shall be liable to a fine of not less than one thousand dollars nor more than ten thousand dollars.

Sec. 10. All acts and parts of acts inconsistent herewith are hereby repealed.

MAPS

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SUBJECT INDEX.

	PAGE
Preliminary Statement	1
I.—The so-called "Storage"	2
II.—The argument as to Bailments	5
III.—The so-called "Central Points"	7
IV.—The gathering charge	10
V.—Reasons for shipment out of the State immaterial on the question of interstate commerce	12
VI.—Prayer for judgment	13

CASES CITED.

	Pages in Brief
General Oil Co. *v.* Crain, 209 U. S., 211....	10
Hall *v.* Pillsbury, 43 Minn., 33	6
Ohio R. R. Comm. *v.* Worthington, 225 U. S., 101	9, 11
Pennsylvania R. R. Co. *v.* Knight, 192 U. S. 21	12
R. R. Comm. of Louisiana *v.* Tex. & Pac. Ry. Co., 229 U. S., 336.....	9, 11, 12
Southern Pac. Terminal Co. *v.* Int. Com. Comm., 219 U. S., 498	11
Texas & N. O. R. R. Co. *v.* Sabine Tram Co., 227 U. S. 111.....	9, 11
Western Transit Co. *v.* Leslie & Co., 242 U. S., 448	9
Coe *v.* Errol, 110 U. S., 517.....	9
Kelley *v.* Rhoads, 188 U. S., 1.....	9
Pa. *v.* D. & H. Canal Co., 21 W. N. C. (Pa.) 406. Aff. Sup. Ct. of Pa., 22 W. N. C., 522	9
State *v.* Engle, Rec'r., 5 Vroom (N. J.) 425..	9
State *v.* Carrigan, 10 Vroom (N. J.) 35.....	9

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

THE EUREKA PIPE LINE COMPANY, Plaintiff-in-error, AGAINST WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General, of the State of West Virginia, Defendants-in-error.	Writ of Error to to the Supreme Court of Appeals of the State of West Virginia. No. 255.

THE EUREKA PIPE LINE COMPANY, Petitioner, AGAINST WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General, of the State of West Virginia, Respondents.	Petition for Writ of Certiorari to the Supreme Court of Appeals of the State of West Virginia. No. 255.

REPLY BRIEF FOR PLAINTIFF-IN-ERROR AND PETITIONER.

The brief filed by defendants-in-error contains certain statements made, for the most part, without citations to the record, which are, we believe, unsupported by,

and contrary to, the evidence. It will conduce to a clearer understanding of the case, if we make a short reply to these statements.

I.

The So-called "Storage."

1. The Eureka Pipe Line Company was not engaged in the business of storing oil during the twelve months in question, if ever, nor was there any "storage" of oil carried on by it, in any real sense of that word. The defendants' argument under this head was presented with even greater urgency in both Courts below, but without result. It was ignored in the opinion of the Circuit Court, and was brushed aside by the Supreme Court of Appeals, in its opinion (Record, 715), where the Court says, with reference to "storage":

> "We do not see how this can affect the matter one way or the other. The tax is not laid upon the business of storing oil within the State, but upon the business of transporting it * * *."

It, therefore, seemed unnecessary for plaintiff-in-error to discuss this question in its main brief before this court. Since, however, the argument is again repeated at great length in the brief just filed for defendants-in-error, we must restate the facts.

The word "storage" has a very definite meaning and indicates the keeping of goods or commodities segregated from others in a definite store, warehouse or other place of deposit. Nothing of the kind has been shown in this case. It is true that the West Virginia statute refers to "storage" of oil, that one of the tariffs filed by the plaintiff-in-error speaks of "storage," and that some of the other exhibits in the case contain the same word; but all of this, we submit, falls far short of proof that there was actual storage, in the face of the uncontradicted testimony to the contrary.

Thus, Mr. Towl, the President of the Company, said (Record, 518) (italics ours):

> "In reference to the charges which are called 'storage charges,' we were advised by counsel that under the laws of the State of West Virginia, taken as a whole, that we were warranted in making that charge and calling it 'for storage.' *There is no actual storage of the oil.* The oil is continually moving through the lines."

Kenney said, (Record, 114):

> "We do not hold oil for any length of time. The oil is moved along in a general way from day to day."

Again, (117):

> "The oil is not held in our system. It moves along daily, in the general stream of oil."

Again, (159):

> * * * "We move the oil along in a continuous stream and do not particularly hold it at any point for any person or corporation. * * * That oil is not held. It moves along through our pipes with the stream of that particular grade of oil and is not held in our pipes or tanks."

See also other citations from the testimony, in our main brief (pp. 12-14).

As explained by Swisher (Record, 296-7), and Kenney (Record, 161), the so-called "storage charge" was in the nature of a demurrage charge, made against the holders of credit balances, when they delayed to order deliveries or shipments against their credit balances more than a certain length of time. It has no reference whatever to the disposition of the actual physical oil.

2. The position taken in the early part of the brief filed for the defendants-in-error, to the effect that oil was "stored," shifts, at pages 16-17 of the brief, to the

position that the pipe line company merely had always on hand a "quantity of oil" equal to that received by it and not yet accounted for. Thus, at page 17 the brief says:

> "The *quantity of oil* is at all times subject to the order and control of the owners";

and again;

> "*While the oil company may transport the particular oil outside of the State, yet the same quantity and grade must remain in the State* until tendered for shipment out of the State."

Again, at page 18:

> "It is true that the owners of the oil can never receive back the identical oil under the method of transporting it, but they are entitled to receive the same quantity and grade."

These, we submit, are distinct admissions that, as the business was actually carried on, the oil received by the pipe line company was not stored or held and that the company was merely required always to have under its control "the same quantity and grade," in order to meet its liabilities.

So much we concede, and that is the precise measure of the pipe line company's obligations under the West Virginia statute. It does not prove real storage in any way whatsoever. It merely indicates that the Company, at all times, had in its system, moving along, a homogeneous stream of oil of sufficient volume, in which the identity of particular quantities of physical oil had been entirely lost.

No so-called "storage charge" was made unless the credit balance had been held for a period of from sixty to ninety days (Swisher, Record, 295-7). Inasmuch as the great mass of the oil in question was "tendered" or consigned weekly (see our main brief, pp. 20-22), it is evident that the so-called "storage" charge cut very

little figure, and was applicable only to a small part of the credit balances. Indeed, the total revenue from the so-called "storage" charge on West Virginia oil, during the twelve months in question, was $6,003.99 (Record, 299), although over six million barrels of such oil were transported during that time by plaintiff-in-error.

3. The brief for defendants-in-error asserts that large quantities of oil recived by The Eureka Pipe Line Company from other States, aggregating some 16,015,-736 barrels, were all "stored" in West Virginia. It is enough to say that the Court below found that all of this oil was in interstate commerce and refused to find, even as to the so-called "Somerset" oil, that it was stored, though stating that, even if such were the fact, it would be immaterial. (Record, 715-716). As to the other oils making up the said amount, there is not a syllable of evidence nor a single word in either opinion of the Courts below, to sustain the assertion that the oil was stored in West Virginia.

II.

The Argument as to "Bailments."

1. The brief of defendants-in-error says, at page 17:

> "Until the oil is tendered for shipment, the oil company's relation thereto *is* that of ***bailee, not carrier.***"

It is not clear what is intended by this statement, since every carrier is also a bailee. If it is intended to argue that the pipe line company is a warehouseman, then the argument proves too much; for, as the opinion of the Supreme Court of Appeals says (Record, 715), (italics ours), "the tax is not laid upon the business of storing oil within the State, *but upon the business of transporting it* * * *." If the pipe line company was a warehouseman, then certainly it was not subject to this

particular tax, whatever the fact may have been in regard to a property tax, and the judgment was, therefore, erroneous.

2. The brief, at page 18, compares the situation to storage of grain in warehouses, and to deposits of money in banks. But in case of bank deposits, the title to the money is by law vested in the bank, and the depositor thereafter has simply a chose in action and no bailment. In the case of grain elevators, the depositors of the grain are sometimes held by statute, though not at common law, to have a bailment of a peculiar kind. Such a bailment is defined in *Hall* v. *Pillsbury*, 43 Minn., 33, 35, cited in our main brief, page 43, where the Court said:

> "The declaration (in the statute) that the delivery shall be deemed and treated as a bailment must be taken as meaning that the depositor shall be deemed to be the owner of, and to have on bailment in the warehouse, the amount of grain that he deposits, although its identity may have been lost by commingling with other, the like kind of grain, and although not a kernel of the identical grain deposited still remains. As fast as grain is removed and other grain is put into the common mass, the new grain takes the place of that originally deposited, and is appropriated to the contract of bailment, so as to become the property of the depositor."

There is some analogy between the situation thus described and that in the present case; but the most accurate statement is that the depositors or shippers of oil are tenants-in-common of the moving stream, a conception which offers no difficulty in view of the quotation from *Hall* v. *Pillsbury, supra,* and of the familiar rule in the law of chattel mortgages, whereby, if so stipulated, the identical goods may be sold and replaced by others, to which the title of the mortgagee will then attach. The chose in action which a bank

depositor has, and the credit which a depositor of grain in an elevator has, may doubtless be taxed as property by the State, because in neither case is there any question of movement or of commerce. Neither the bank nor the warehouseman is a carrier. What, if any, right the State of West Virginia has to tax credit balances for oil, we are not here called upon to discuss.

Of course, this whole discussion as to a property tax is purely irrelevant, since the statute here under consideration is one which imposes a privilege tax on the business of transportation.

III.

The So-called "Central Points."

1. In our main brief, pages 17-18, this subject is discussed with special reference to statements in the opinion of the Court below, which we deem erroneous. The brief for defendants-in-error falls into the same error. It concedes that what is meant by the "central points" are the points referred to by the witnesses as "tariff points" and enumerated in plaintiff's Exhibit 43 (See our main brief p. 17). As shown in our main brief, (p. 18) these points were certainly not delivery points, (Kenney, Record, 81-2). Nor can the points be said to be "central" in any sense. Geographically, they are all situated adjacent or very near to the Pennsylvania state line. It was impossible, as business was conducted, for oil to be tranported from these points to any one of the three refineries to which deliveries were made, because, throughout the entire period, the general current of the stream of oil was northerly and easterly, and there was no reverse current. (Record, 92-3.) But the testimony of Mr. Towl would seem to be conclusive. He said, as to the points in question (Record, 621), that there was no refinery in West Virginia to which the oil which reached those points could be delivered, and that all of the oil received there passed

out of the State. The inset on the map, Appendix II, of our main brief, shows this situation graphically, where six of these so-called "central points" are shown close together and squarely on the State line, with pipes running immediately across into Pennsylvania, and no others; the map itself shows the same situation as to the other points.

2. Nor does the brief for defendants-in-error cite any facts to show that the "storage" which it claims to have existed took place, if at all, at the so-called "central points," and there is no such evidence. All the proof is to the effect that the entire quantity of oil of a certain grade, at any moment in the possession of the Eureka, was distributed through its entire system, and not massed together at these so-called "central points," or anywhere else. (Record, 157, 163, 360.)

3. That Pennsylvania grade oil was not "assembled" at the so-called "central points," as the Court below seems to have thought, and was not "stored" at those points nor held so as in any way to support the bailment theory of Counsel for defendants-in-error, is further shown by these facts: Of the total amount of oil in controversy, the oil moved through Morgantown and that delivered to the West Virginia and Pure Oil Pipe Line Companies, which constituted more than 84 per cent. of the whole, was pumped over into Pennsylvania as rapidly after its arrival as was physically possible, throughout the twelve months in question. (Record, 99, 100, 484, 231, 252, 261.) As to the remaining 16 per cent. of the oil, which was pumped through the smaller tariff points, it was nowhere held longer than the exigencies of the business made necessary. (Record, 117, 140.)

4. It should also be noted that wherever oil was held for even a short time, it was not held for the

Thus, as to logs in course of transportation detained within the State by low water.

Coe v. *Errol*, 116 U. S., 517, 525.

"Lack of facilities for immediate transportation."

Kelley v. *Rhoades*, 188 U. S., 1, 5.

Pa. v. *D. & H. Canal Co.*, 21 W. N. C. (Pa.) 406. Aff'd. Sup. Ct. of Pennsylvania, 22 W. N. C., 522.

See also

State v. *Engle, Rec'r.* 5 Vroom (N. J.), 425.

State v. *Carrigan*, 10 Vroom (N. J.), 35.

Both cases cited with approval in *General Oil Co.* v. *Crain*, 209 U. S., 211.

Even where the delay was for the convenience of the shipper, but was regularly allowed by a tariff, the delay was disregarded.

West. Transit Co. v. *Leslie*, 242 U. S., 448, and other cases cited below.

convenience of any shipper. As Kenney testified (Record, 140):

> "Q. The holding of the oil in those tanks, under the circumstances to which you have testified, is not done for the convenience of any shippers, is it? It is done to suit the exigencies of your business, is it not? A. No, sir, it is not done for the convenience of any shipper; it is done for the exigencies of our business."

The holding of a commodity by a carrier for a necessary period in the course of the orderly conduct of business, and to meet its exigencies, is not storage nor does it create the relation of warehouseman; nor does it affect the status of the commodity as respect interstate commerce.

In *Western Transit Co.* v. *Leslie & Co.*, 242 U. S., 448, 451, four months "free storage" were allowed and availed of by the owner, and this Court held that the railroad was liable as carrier and not as warehouseman.

In *Ohio R. R. Comm.* v. *Worthington*, 225 U. S., 101, 106, 108, the coal was

> "accumulated in large quantities at Huron and only taken out of the accumulated lots from time to time."

In *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227 U. S., 111, 118, seven days for unloading and thirty days free storage on the docks were permitted and availed of by the shippers.

In *Railroad Comm. of La.* v. *Texas & Pac. Ry. Co.*, 229 U. S., 336, 340, the railroad allowed shippers twenty days for delivery without demurrage,

> "the shippers always holding the cars on the railroad track until they could accumulate cargo to fill their export orders and arrange for transportation."

In none of the foregoing cases did the delay affect the conclusion of the Court that the commodities were continuously in interstate commerce.

See also

General Oil Co. v. *Crain,* 209 U. S., 211, 230.

IV.

The Gathering Charge.

1. The tariff under which the gathering charge is made is clearly an interstate tariff (Plaintiff's Exhibit 35, Record, 666-7). It was regularly filed with the Interstate Commerce Commission. It is entitled, "I. C. C. No. 151, P. S. C. W. Va. No. 6." It states upon its face that shipments transported under it were entitled to the privilege and subject to charges "on file with the Interstate Commerce Commission as to interstate traffic." The words, "local tariff" mean nothing more than "that this is not a joint tariff" (Towl, Record, 469). The tariff never was entitled anywhere otherwise than appears upon its face.

The same may be said of the second tariff, (Plaintiff's Exhibit 33) increasing the gathering charge, which was filed after this suit was begun. It is entitled "I. C. C. No. 160, P. S. C. W. Va. No. 8"; and in other respects reads the same as tariff Exhibit 35, except that it has this additional clause:

> "Increased rates contained in this schedule are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 1673 of August 9, 1919."

2. The brief for defendants-in-error claims that the gathering charge was rendered for services in conveying the oil to the so-called "central points" above re-

ferred to. But the Court below was not of this opinion, for it says (Record, 718) (italics ours):

> "For the service rendered by it in gathering the oil together, and *conveying it to its trunk lines* during the period involved in this case it charged and received twenty cents per barrel, known as a 'gathering charge' * * *."

But, in the light of the argument presented in our main brief, it is immaterial whether the gathering charge was received for carrying the oil to the Eureka's trunk lines, as found by the Court below, or for carrying that oil to the so-called "central points," as now contended by Counsel for defendants-in-error, or whether the charge was merely an additional general charge permitted to be made by the two Commissions, upon oil which also was subject to the interstate rate, since, as shown in our main brief, Point VI, p. 46, this was at most a case of re-billing, which, under the decisions of this court, was immaterial as regards the question whether the oil was in interstate commerce.

Southern Pac. Terminal Co. v. *Int. Commerce Comm.*, 219 U. S., 498, 526.

Ohio R. R. Comm. v. *Worthington*, 225 U. S., 101.

Texas & N. O. R. R. v. *Sabine Tram. Co.*, 227 U. S., 111.

R. R. Comm. of Louisiana v. *Texas & Pac. Ry. Co.*, 229 U. S., 336.

In all of these cases the commodity was consigned to a point within the State of origin, and then a new bill of lading was made out when the commodity left the State. Yet, the fact that the first shipment was on a local contract of carriage was disregarded.

In *Railroad Comm. of La.* v. *Texas, etc.*, Mr. Justice McKenna, at page 341, referring tc the three prior cases above cited, says:

> "In those cases there was necessarily a local movement of freight, and it necessarily terminated at the seaboard. But it was decided that its character and continuity as a movement in foreign commerce did not terminate, nor was it affected by being transported on local bills of lading. The principle enunciated in the cases was that it is the essential character of the commerce, not the accident of local or through bills of lading, which determines federal or state control over it."

3. The case of *Pennsylvania Railroad Co.* v. *Knight*, 192 U. S., 21, cited on brief for defendants-in-error, is easily distinguishable. In that case, the Court said, at page 27 (italics ours):

> "The cab service is rendered wholly within the State and has no contractual or *necessary* relation to interstate transportation."

In the instant case, from the moment the oil was run into the pipes of plaintiff-in-error, it was moved in a continuous stream through and out of the State, and its gathering service, therefore, did have a *necessary* relation to, and formed an integral part of, interstate transportation.

V.

Whether the carrier was under obligation, or had any right, to ship the oil out of the State, or as to who was the owner of the oil, is immaterial on the question of interstate commerce, in the light of the decisions cited under Point I of our main brief.

The physical oil, being carried in a continuous stream across the State line, was in interstate commerce without more. The only obligation of the pipe line company was to keep in its system the required quantity and grade of oil; and this it most carefully did. Provided it complied with this requirement, it was entirely free to ship any particular physical oil out of the State at its discretion.

VI.

The judgment asked for in Point VIII of the main brief should be granted.

JAMES M. BECK,
FRANK L. CRAWFORD,
Attorneys for Plaintiff-in-Error,
and Petitioner.

Dated, October 4, 1921.

Office Supreme Court, U.
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WM. R. STANSBU
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IN THE

Supreme Court of the United States

OCTOBER TERM 1921.

THE EUREKA PIPE LINE COMPANY,
Plaintiff in Error,
against
WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General of the State of West Virginia,
Defendants in Error.

Writ of Error to the Supreme Court of Appeals of the State of West Virginia.

No. 255.

(Printed Record No. 805, October Term, 1920.)

THE EUREKA PIPE LINE COMPANY,
Petitioner,
against
WALTER S. HALLANAN, State Tax Commissioner, and E. T. ENGLAND, Attorney General of the State of West Virginia,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of Appeals of the State of West Virginia.

No. 255.

(Printed Record No. 805, October Term, 1920.)

MOTION TO DISMISS WRIT OF ERROR AND BRIEF FOR DEFENDANTS-IN-ERROR.

E. T. ENGLAND,
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Counsel for the defendants
in error.

TRIBUNE PRINTING CO., CHARLESTON, W. VA.

SUBJECT INDEX.

Motion to dismiss writ of error 1
Statement of the facts 5
The Issue 11
Argument:
(1) In General 11
(2) Plaintiffs-in-Error's points of argument 16
(3) Business of Plaintiff-in-Error, under consideration, intrastate—and so regarded and treated by it 27
Authorities relied upon by Plaintiff-in-Error 35
All oil mingled in a common stock 44
Conclusion 46

CASES CITED

	Pages in Brief
Allen v. Pullman Car Co., 191 U. S. 181	15
American Mfg. Co. v. St. Louis, 250 U. S. 459	14
Arkadelphia Milling Co. v. St. Louis Ry. Co. 249 U. S. 134	19, 20
Bacon v. Illinois, 227 U. S. 504	43
Baltic Mining Co. v. Massachusetts, 231 U. S. 68	14
Barrett v. New York, 232 U. S. 14	12
Bowman v. Continental Oil Co., U. S. Adv. Sheets, July 15, 1921, p. 70	13, 46
Bratch v. San Antonio Ry. Co., 254 U. S. 489	42
Brown v. Houston, 114 U. S. 622	46
Coe v. Erroll, 116 U. S. 517	19, 26
Dana v. Dana, 250 U. S. 220	5
Drudge v. Lightner, 18 Ind. App. 694	30
Elmendorf v. Taylor, 10 Wheat. 152	12
Ficklen vs. Shelby County, 145 U. S. 1	14
Flint v. Stone Tracey Co., 220 U. S. 107	14
Franke v. Johnstown Fuel Supply Co., 70 Pa. Sp. Ct. Rep. 446	46
General Oil Co. v. Crain, 209 U. S. 211	19, 20
Gulf, Colorado, S. F. R. Co. v. Texas, 204 U. S. 403	19
Home Insurance Co. v. New York, 134 U. S. 594	14
Kansas City, etc. R. R. Co. v. Botkin, 240 U. S. 459	14
Kansas City Railway Co. v. Stiles, 242 U. S. 111	14
Kehrer v. Stewart, 197 U. S. 60	12
Louisville, etc. Railway v. Mississippi, 133 U. S. 587	12

McCluskey v. Marysville Ry. Co., 243 U. S. 36 19
Maxwell v. Bugbee, 250 U. S. 525 14
May v. New Orleans, 178 U. S. 496 46
Mergenthaler Linotype Co. v. Davis, 251 U. S. 256 5
New York Central Ry. Co. v. Mohney, 252 U. S. 152 ..... 19, 26
Osborne v. Florida, 164 U. S. 650 ..... 12, 13, 15
Peik v. Chicago, etc. R. R. Co., 94 U. S. 164 12
Pennsylvania Gas Co. v. Public Service Com. 252 U. S. 23 41
Pennsylvania R. R. Co. v. Knight, 192 U. S. 20 31
Pittsburgh Coal Co. v. Bates, 156 U. S. 577..... 46
Platt v. New York, 232 U. S. 58 12
Postal Telegraph Co. v. Richmond, 249 U. S. 252 14
Pullman Co. v. Adams, 189 U. S. 420 12
Quong Ham Wah Co. v. Industrial Accident Commission, U. S. Advance Sheets, April 15, 1921 12
Railroad Commission v. Worthington, 225 U. S. 101 36
Railroad Com. of Louisiana v. T. & P. Ry. Co. 229 U. S. 336 40
Southern P. Terminal Co. v. Interstate Commerce Com, 219 U. S. 498 ..... 39, 40
Standard Oil Co. v. Graves, 249 U. S. 389 .. 43
Swift & Co. v. United States, 196 U. S. 375 39
United States Express Co. v. Minnesota, 233 U. S. 335 14
Ward v. Love County, 253 U. S. 17 5
Western Oil Refining Co. v. Lipscomb, 244 U. S. 346 35
Yockey v. Smith, 181 Ill. 564 30

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No. 255.

(Printed Record No. 805, October Term, 1920.)

MOTION TO DISMISS WRIT OF ERROR AND BRIEF FOR DEFENDANTS-IN-ERROR.

The defendants-in-error respectfully move that the writ of error awarded herein be dismissed because the decision of the court below was not of such character as to justify the award of such writ under Section 237, of the Judicial Code as amended by the Act of Congress, approved September 6, 1916.

The statute in question here, being Chapter 5, of the Acts of the Legislature of West Virginia passed by its

Extraordinary Session 1919, imposes upon every person, firm and corporation engaged in said state in the transportation of crude oil or petroleum, or the distillates thereof, by means of pipe lines, for sale to consumers within or without the state, or use within or without the state, as an annual privilege tax for engaging in such business in said state, two cents for each barrel of crude oil or petroleum, or the distillates thereof, as is so transported or conveyed within said state. The statute, in terms, does not apply to any person, firm or corporation engaged in such business where crude oil or petroleum, or the distillates thereof, are by the entire system of such person, firm or corporation transported a distance of less than ten miles.

This statute is assailed by the plaintiff-in-error as imposing a direct and immediate burden upon the interstate commerce in which said plaintiff is engaged and as violative of the commerce clause of Article I, Section 8, of the Constitution of the United States.

The Supreme Court of Appeals of West Virginia construed this statute as imposing a tax only upon those engaged in the transportation of crude oil or petroleum, or the distillates thereof, in intrastate commerce, and further construed said statute as authorizing the tax imposed to be measured only by the amount of such commerce. The syllabus and opinion of said Supreme Court of Appeals of West Virginia is found in the record at pages 702 to 720, inclusive, and in the syllabus prepared by the said Court, (which under the Constitution of West Virginia, Sec. 5, Article VIII, it is the duty of the Court to prepare and which state and constitute all of the points actually adjudicated in each case.) These points are stated as follows:

> "3. A State may not impose a tax upon the privilege of engaging in interstate commerce within its borders.

"4. A State may not impose a tax upon the privilege of engaging in intrastate commerce, and measure the amount thereof by a certain percentage of all of the business transacted within the State, whether interstate or intrastate.

"5. Chaper 5 of the Acts of the Legislature, Extraordinary Session 1919, imposing a tax upon the business of engaging in the transportation of oil and gas by pipe lines, properly construed, imposes such tax only on those engaged in the transportation of such commodities in intrastate commerce, measured by the amount of such commerce."

It is therefore apparent that the court below did not construe said statute so as to permit of its imposing a tax upon interstate commerce, or even as authorizing the tax imposed upon intrastate commerce to be measured, either in whole or in part, by any interstate commerce whatever. The points of the syllabus quoted to state the law affirmatively, and also state negatively that no such power exists in a State, and that any statute either imposing a tax upon the privilege of engaging in interstate commerce or attempting to measure the amount of a tax on intrastate commerce by a certain percentage of all business transacted within the State, whether interstate or intrastate, is invalid.

We, therefore, submit that this record and the decision of the court below do not present or draw in question the validity of a statute of, or an authority exercised under any State the invalidity of which is claimed on the ground of their being repugnant to the Constitution, treaties or laws of the United States, with the necessary decision in favor of such validity, prescribed by the Act of September 6, 1919, to justify a re-examination thereof by this Court upon writ of error.

Neither do we think that the decision, so construing said statute, presents a case wherein was drawn in question "any title, right, privilege or immunity" claimed under the Constitution or any treaty or statute of, or

commission or authority exercised under the United States, so as to justify the award of a writ of certiorari, which was sought by the plaintiff.

We respectfully submit that the record presents nothing except an insistence on the part of the plaintiff of a right to carry on an intrastate business, as properly defined by the court below, without being subject to taxation by the State of West Virginia.

This claim is, in effect, that because the commodities in question, crude oil or petroleum, or the distillates thereof, are the lawful subjects of interstate commerce and may or may not be subsequently placed therein, that they may neither be subject to a tax, nor made the measure of a tax, *prior* to their being at least definitely determined by its owner that they shall be so placed in such commerce, or actually so started therein.

In the case at bar, however, it will be noted that while the validity of Chapter 5, Acts 1919 of the West Virginia Legislature is challenged by plaintiff's bill, such challenge is based upon the ground and reason that said statute, in terms, applied to interstate commerce. The decision of the West Virginia Supreme Court of Appeals is that such statute does not so apply, that it was not the legislative intent that it should so apply, and that if it had done so it would be invalid. Therefore, the *validity* of said statute as construed and complained of in the plaintiff's bill was not sustained, but, on the contrary, the gravamen of its complaint was fully sustained by the Court below, but that court held, in substance, that its complaint was imaginary, rather than real. The statute as construed and sustained bears no relation and but little resemblance to the statute as construed and complained of by the plaintiff. Technically, the validity of the statute was sustained, but practically it is a different statute from that of which the plaintiff complained. As construed, it has no relation to inter-

state commerce, whether as a subject of taxation or as the measure of a tax, is not repugnant to the Federal Constitution, and we, therefore, believe and submit that no Federal question as to the validity of such statute was drawn in question in the court below within the meaning or intent of Section 237, Judicial Code, and, further, that if the validity of such statute was originally drawn in question the decision of the lower court obviated any Federal question as to its validity which should properly be passed upon by this court on writ of error.

Dana v. Dana, 250 U. S. 220;
Mergenthaler Linotype Co. v. Davis, 251 U. S. 256.

No vested property right arising out of a law of Congress and protected by the Constitution of the United States, as in *Ward* v. *Love County*, 253 U. S. 17, 22, and relied upon by counsel for plaintiff in error, is involved here.

We, therefore, respectfully move that the writ of error be dismissed, and the writ of certiorari be denied.

STATEMENT OF THE FACTS.

The Eureka Pipe Line Company is a West Virginia corporation, with its chief works and pipe line system *wholly* within the the State of West Virginia, and with its principal office at Oil City, Pennsylvania; and is engaged in the business of *storing and transporting*, by means of pipe lines, crude oil or petroleum within the State of West Virginia. Its plant and pipe line system are located in twenty-seven counties of the State of West Virginia, and consist of pipe lines aggregating about 4500 miles in length, a large number of pumping stations, a vast number of tanks of enormous storage capacity, telegraph lines, and other property and equipment.

Its pipe line system connects with that of the Cumber-

land Pipe Line Company, a corporation, at the West Virginia-Kentucky State line; with that of the Buckeye Pipe Line Company, a corporation, at the West Virginia-Ohio State line; and with those of the Southwest Pennsylvania Pipe Lines, a corporation, and the Southern Pipe Line Company, a corporation, respectively, at two different points on the West Virginia-Pennsylvania State line.

For the year ended June 30, 1919, the Oil Company *stored* in, and transported between points within, the State of West Virginia, four grades of oil, namely 9,076,599.83 barrels of the Pennsylvania grade, which was produced in West Virginia, Ohio and Pennsylvania in quantities, respectively, hereinafter given; 748,090.02 barrels of the Corning Grade; which was produced in Ohio; 4,690,838.14 barrels of the Somersett-Cabell Grade, which, with the exception of 7,496.60 barrels, produced in Cabell County, West Virginia, was produced in the State of Kentucky, and 8,010,289.56 barrels of the Mid-Continent Grade, which was produced in Oklahoma and other western states. Of the total quantity of the Pennsylvania Grade of oil, 9,076,599.83 barrels, handled by the Oil Company during the year ended June 30, 1919, 6,510,-081.51 barrels *were produced in West Virginia;* 2,459,-612.81 barrels were produced in Ohio; and 106,905.51 barrels were produced in Pennsylvania. Of the above quantity of the Pennsylvania Grade of oil produced in West Virginia, 6,238,912.15 barrels were "gathered" or "run" under a statute of West Virginia which permitted said Company to charge for this service *twenty cents* per barrel. The service rendered by the Oil Company for this twenty cents per barrel was purely a *local or intrastate service,* and merely consisted of collecting, "gathering" and "running" the oil from the producers' tanks at their wells and assembling it at certain "central points" or "delivery points" *for storage, for which it*

made a charge, depending upon the time of storage, awaiting the producers' pleasure, or for shipment to points within, or beyond, the State, as the producers might *thereafter* determine.

The "central points" or "delivery points" at which such oil was assembled and stored in West Virginia were Morgantown, Downs, Brice, Beula, Hoffman, Core, Bucher, Gibson, Belle, Carson, Murray, Scott, Jake's Run, and Littleton. These places were the *only* places (except Cabin Creek, which is not involved in this controversy) from which oil of the Pennsylvania Grade produced in West Virginia was transported to points without the State of West Virginia on what may properly be called I. C. C. tariffs. Of the total quantity of oil of the Pennsylvania Grade produced in West Virginia and transported to points without the State of West Virginia, only 722,704.79 barrels were transported out of the State from Downs, Brice, Beula, Hoffman, Core, Bucher, Gibson, Belle, Carson, Murray, Scott, Jake's Run and Littleton all of the balance being transported from Morgantown. Of the total quantity of the Pennsylvania Grade of oil produced in West Virginia for the period in question (the year ended June 30, 1919) 1,239,099.55 barrels were used in West Virginia, and it is conceded by the Oil Company that this quantity was transported in *intrastate* commerce. When such oil is "gathered" or "run" from the producers' tanks, *it has not been tendered for shipment to any definite or ascertained place,* and is received by the Oil Company to be stored and held until the producer decides what he will do with the same. The producer is given credit on the books of the Oil Company for the number of barrels of oil received by it. The quantity of oil standing to the credit of the producer on the books of the Company is called a "credit balance." The forms of such "credit balances" are shown by "Ex. Hardy No. 1" to "Ex. Hardy No. 22", both inclusive

(Rec. pp. 1522-1543). It will be noted from an examination of these exhibits that such oil is *held on storage*, for which a substantial charge is made and collected. *After* such oil is "gathered" and "run", if the producer desires to hold said oil indefinitely he can do so, by paying storage; or he may sell it within the State of West Virginia, or he may consign it for transportation to definite points within or without the State of West Virginia. Unless sold or consigned by the producer, the quantity of oil represented by his credit balance is held by the Oil Company in its tanks or lines within the State of West Virginia, as required by the laws of the State of West Virginia. If the producer or owner desires to ship said oil out of the State of West Virginia, he issues to the Oil Company what is called a "tender of shipment". For a form of such tender of shipment, see Plaintiff's Exhibit No. 38, Record, page 1492. Not until such tender of shipment is made do the I. C. C. tariffs apply. By I. C. C. tariffs, we mean the tariffs which apply for interstate shipments of oil and which are called Interstate *Joint* Tariffs. When oil is thus tendered for shipment to points without the State, it moves on an I. C. C. *Joint* Tariff on the rates provided therein, *in which the connecting carriers participate*, and which are *exclusive of, and in addition to*, the "gathering" or "running" charge of twenty cents per barrel, in which twenty cents per barrel the connecting carriers do not participate; and which twenty cents per barrel is imposed and collected by the Oil Company *before* the oil thus "gathered" or "run" is tendered for shipment. In other words, this charge of twenty cents (now thirty cents) per barrel is imposed and collected by the Oil Company *before* any through or joint rate applies, and before any tender of shipment is made, and is purely a local rate, and solely for an *intrastate service*.

We note that counsel for the Oil Company erroneously

insist upon calling the tariff upon which the oil is "gathered" or "run" in West Virginia, issued and filed under the provisions of the laws of the State of West Virginia, which permit a charge of twenty cents per barrel for such service, an Interstate Tariff. This Tariff is really a local tariff, and when filed with the Public Service Commission of West Virginia was entitled "Local Tariff No. 151", but when filed with the Interstate Commerce Commission was denominated an Interstate Tariff.

It appears on the face of this tariff, (which, when filed with the Public Service Commission of West Virginia, was entitled a "Local Tariff", and which, when filed with the Interstate Commerce Commission, was entitled an "Interstate Tariff"), that the charge of twenty cents per barrel is imposed and collected by the Oil Company, "*For gathering and transporting oil from wells to delivery points within the State of West Virginia;*" and that, "*The rates named in this tariff are for the intrastate transportation of crude petroleum, oil, etc.*"

That such charge of twenty cents (now thirty cents) per barrel was made solely for an intrastate service, and so recognized by the Oil Company, we invite attention to the printed record where it appears (undenied) that the Oil Company some time prior to the 20th day of September, 1919, applied to the Public Service Commission of West Virginia for an increase for this service, and where it further appears that on the 20th day of September, 1919, after the Act in controversy was in effect, said Commission allowed an increase of ten cents per barrel for this service,—the rate after September 20, 1919, for this service being thirty cents per barrel, as shown by "Local Tariff No. 160". Said "Local Tariff No. 160", covering the thirty cents per barrel allowed by the Public Service Commission of West Virginia, on the 20th day of September, 1919, when filed with the Interstate Commerce Commission, was designated an "Interstate Tar-

iff", although the Interstate Commerce Commission had nothing whatever to do with the fixing of said rate.

We therefore request this honorable court to note that the only tariffs *which apply to interstate shipments* of oil are those entitlel "Interstate *Joint* Tariffs" as distinguished from "Local Tariffs" and "Interstate Tariffs."

It will be noted from the opinion of the Supreme Court of Appeals of West Virginia, whose decree is appealed from, that the only oil permitted to be used as the measure of the amount of the tax imposed by the Act in question, for such intrastate state service, is that "gathered" and "run" by the Oil Company within the State of West Virginia for which it is allowed to charge thirty cents per barrel, as hereinbefore explained.

While not an omission from the record, yet the Court will take judicial notice of the statute law of West Virginia, and of the fact that during the pendency of this suit the Legislature of said State, Regular Session 1921, adopted a new and comprehensive system of taxation known as the "Gross Sales Tax" and being Chapter 110, Acts 1921. This statute repealed Chapter 5 of the Acts of 1919, Extraordinary Session, the statute involved in this litigation, but with a *proviso* continuing it in force for the assessment and collection of taxes which have accrued thereunder to June 30, 1921, the repealing section, so far as material, being as follows:

> "Sec. 16. Sections * * * * * * and sections one to nine, both inclusive, of chapter 5, of the Acts of the Legislature of West Virginia, Extraordinary Session of one thousand nine hundred and nineteen, and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed. *Provided, however,* that said sections shall remain in force for the assessment and collection of all taxes which have accrued thereunder up to and including June thirtieth, one thousand nine hundred and twenty-one and for

the imposition and collection of all penalties which have accrued and may accrue in relation to any such taxes up to and including June thirtieth, one thousand nine hundred and twenty-one."

THE ISSUE.

The *real and only* issue in this case is whether the service rendered by the Oil Company in collecting and "gathering" oil from producers' tanks at their wells in the State of West Virginia and "running" and assembling it at "central points" or "delivery points" (counsel for plaintiff say such points should be designated "tariff points," notwithstanding the Tariffs under which such charge is imposed say that it is, "For transporting oil from wells to *delivery points* within the State of West Virginia,") from which it is ultimately transported to its destination, for which service the Oil Company *now* imposes and receives thirty cents per barrel, known as the "gathering" or "running" charge, fixed by the Public Service Commission of West Virginia, pursuant to the laws of the State of West Virginia, is an intrastate service, and may properly be used as the *measure* of the tax imposed upon the business of engaging in the *intrastate* transportation of oil by pipe lines, by Chapter 5, of the Acts of the Legislature of West Virginia, Extraordinary Session, 1919.

ARGUMENT.

One. *In General.* We assume that no question will be raised as to the construction and interpretation of the statute established by the decision of the Supreme Court of Appeals of West Virginia, being binding upon this Court, and that such construction is to be taken and accepted by this Court for all purposes as being the statute itself. Such seems to be the unbroken rule of decisions

from at least as early as the impressive language used by *Chief Justice* Marshall in the case of *Elmendorf* v. *Taylor*, 10 Wheat. 152, to at least as recently as *Quong Ham Wah Co.* v. *Industrial Accident Commission*, decided March 21, 1921, Adv. Sheets April 15, 1921.

Inasmuch, however, as certain of the plaintiff in error's assignments of error, would seem to attempt to draw in question the correctness of the construction placed by the Court below upon Chapter 5, Acts 1919, Extraordinary Session, insofar as the decision holds that it was the legislative intent to thereby impose a tax only upon the intrastate transportation of the plaintiff and measured by the amount of such commerce, then we submit that the correctness of the Court's decision in so construing and limiting such statute is plainly correct under the decisions cited by the Court in its opinion, found in the record on page 709 et seq., and under the following cases, which are only a few selected from many:

Quong Ham Wah Co. v. Industrial Accident Commission, Adv. Sheets April 15, 1921;
Kehrer v. Stewart, 197 U. S. 60, 49 L. Ed. 663;
Pullman Company v. Adams, 189 U. S. 420, 47 L. Ed. 877;
Platt v. New York, 232 U. S. 58, 58 L. Ed. 492;
Barrett v. New York, 232 U. S. 14, 58 L. Ed. 482;
Louisville, etc., Ry. Co. v. Mississippi, 133 U. S. 587, 33 L. Ed. 784;
Peik v. Chicago, etc., R. R. Co., 94 U. S. 164, 24 L. Ed. 97;
Osborne v. Florida, 164 U. S. 650, 41 L. Ed. 586.

It was at no time contended by counsel for the defendants in this case that the statute involved required the payment of the privilege tax to enable the plaintiff to carry on its interstate business. It has been and is conceded that it may carry on all business which con-

stitutes interstate commerce without the payment of any tax as fully and freely in all respects as if this statute had never been enacted. It was contended in the Court below that as a condition of carrying on intrastate business the plaintiff must pay a license tax, and that in the ascertainment and computation of the amount of such tax interstate business as well as intrastate business should be considered. But this branch of the contention of the defendants was decided squarely against them by the Court below. That court, as clearly appears from its opinion, held that the statute did not contemplate or permit the consideration, even as a partial *measure* of the tax, any interstate business, and further, that if it had so attempted to require such interstate business to be considered for such purpose, it would have been invalid.

There is, therefore, eliminated from this case, so far as the interstate commerce clause of the Federal Constitution is concerned, every vestige of a Federal question except the question whether or not the "gathering" and "running" of oil from wells to "*delivery points*" within the State of West Virginia is an interstate or intrastate service, and the number of barrels so transported is a lawful measure of the privilege tax in controversy.

It can certainly not be questioned that the State has full power to impose a privilege tax upon the right of a corporation to carry on an intrastate business simply because such corporation also carries on, through the same instrumentalities, an interstate business.

> *Osborne v. Florida,* 164 U. S. 650, 41 L. Ed. 586;
> *Bowman v. Continental Oil Co.,* Adv. Sheets July 15, 1921, p. 70.

The court below having expressly limited the tax to the right to carry on such an intrastate business, and having limited the measurement of such tax by the

amount of such intrastate business, excluding even from the measurement of such tax all interstate business as defined in the opinion, it is unnecessary for the defendants in error to seek to bring such decision within that class of cases which hold that an excise tax imposed generally upon the privilege of doing a business is ordinarily severable when its application to interstate business would render it invalid, as in the case of *Bowman v. Continental Oil Co., supra.* Nor is it necessary to attempt to bring it within the long line of cases which hold that where the right of taxation upon the privilege is lawfully imposed under the sovereign authority of a State that the measure of such tax is arrived at by the consideration of income produced in part from property which is itself non-taxable, nor income derived in part from interstate business. Of this last class of cases, sustaining such taxation, the following are but a few:

Flint v. Stone Tracey Co., 220 U. S. 107;
Kansas City etc. R. R. v. Botkin, 240 U. S. 459, 63 L. Ed. 617;
American Mfg. Co. v. St. Louis, 250 U. S. 459, 63 L. Ed. 1084;
Maxwell v. Bugbee, 250 U. S. 525, 63 L. Ed. 1124;
Home Ins. Co. v. New York, 134 U. S. 594, 33 L. Ed. 1025;
Baltic Mining Co. v. Massachusetts, 231 U. S. 68, 82 L. Ed. 127;
United Express Co. v. Minnesota, 233 U. S. 335, 56 L. Ed. 459;
Kansas City etc. R. R. v. Stiles, 242 U. S. 111, 61 L. Ed. 176;
Postal Telegraph Co. v. Richmond, 249 U. S. 252, 63 L. Ed. 59;
Ficklen v. Shelby County, 145 U. S. 1, 36 L. Ed. 601.

Nor is it necessary to consider those cases which sustain such a tax even where the intrastate business is relatively insignificant, and carried on only as incidental to the interstate business.

Osborne v. Florida, 164 U. S. 650, at page 655, 41 L. Ed. at page 588.

Allen v. Pullman Palace Car Co., 191 U. S. at page 181, 48 L. Ed. at page 139.

These cases were urged upon the Supreme Court of Appeals of West Virginia as sustaining the measure of the tax contended for by the State, which measure would have included the oil transported in interstate commerce. But, as will appear from the opinion below, that court construed the language of the statute and the power of the State with the utmost strictness limiting both to purely intrastate business. To this construction the defendants in error felt constrained to bow, and it is submitted that of such construction the plaintiff in error has not just cause of complaint and that its complaint, based thereon, presents no substantial Federal question.

While in our view the record before the court presents but a single narrow question for its consideration, in the event that the court has jurisdiction either upon writ of error or certiorari, namely, whether the "gathering", "running", and transporting of oil from wells to "delivery points" within the State of West Virginia, not tendered for shipment but to be held subject to the order of the owner thereof, for which service the Company now receives thirty cents per barrel, is an intrastate service, and the lawful measure of the tax imposed by the Act in question.

As the plaintiff in error's points of argument are so interwoven and each is dependent upon the others, we will not attempt to consider them separately, or in the

order presented in its brief, and those which we deem necessary to consider we will consider together.

PLAINTIFF-IN-ERROR'S POINTS OF ARGUMENT.

Two. We again invite attention to the fact that the "local tariff" permitting the twenty cent (now thirty cent) charge for gathering oil in the State of West Virginia, issued and filed pursuant to the laws of West Virginia, expressly shows on its fact that the charge is made "FOR GATHERING AND TRANSPORTING OIL FROM WELLS TO DELIVERY POINTS WITHIN THE STATE OF WEST VIRGINIA", and "THE RATES NAMED IN THIS TARIFF ARE FOR THE INTRASTATE TRANSPORTATION OF CRUDE PETROLEUM, OIL, ETC." The said "delivery points" are undoubtedly Morgantown, Downs, Brice, Beula, Hoffman, Core, Bucher, Gibson, Belle, Carson, Murray, Scott, Jake's Run, and Littleton, from which places the oil company receives "tenders of shipment."

We desire to emphasize that the Oil Company is *not* engaged in the business of producing, owning, or selling oil, and that it does not own the oil which it transports. It is engaged in the business of transporting oil *for others.* Not owning the oil, it cannot ship the same outside of the State or commit it to interstate commerce without the direction or consent of the owner; and the oil certainly cannot commit itself to interstate commerce. At the time the oil is "gathered" by the Oil Company at the producers' wells, it is received by it *for the sole and only purpose of making delivery thereof, or a like quantity and grade or gravity of oil,* in merchantable condition, to the owners or their assigns, at the *points of delivery,* within the State of West Virginia. The *quantity of oil* turned over to the Oil Company by the producers at their wells must, under the laws of West

Virginia, remain in its tanks and lines until the further order of the owners thereof. In the meantime, the owners may sell the same within the State; or tender it for transportation outside of the State; or have the Oil Company to hold it in storage for better market conditions and higher prices, or other purposes,—paying storage charges therefor. The *quantity* of oil is at all times subject to the order and control of the owners. *The rules and practice of the Oil Company require the* owners to sign "tenders of shipment" before it will start the same on an interstate journey and before interstate joint rates apply. The oil, *when* "gathered" and "run" at the producers' wells, *is not for interstate transportation.* It does not go into interstate transportation until tendered for shipment.

The "gathering" of oil, under the facts of the present case, was not a shipment. There was no tender, or contract, for carriage beyond the state, and there was no bill of lading; there was no consignee. The oil was not delivered to, or received by, the Oil Company for transportation outside of the State. It had no right to deliver the oil to another carrier, and, neither it nor any other carrier was under obligation to carry it out of the State. The oil had no destination outside of the State and it had not started upon an interstate journey. It was merely a commodity in the custody of the Oil Company as *bailee,* subject to such future disposition thereof as the *owners* thereof might *thereafter* elect or determine. While the Oil Company may transport the particular oil outside of the State, yet the same *quantity* and grade must remain in the State until tendered for shipment ouside of the State. Until the oil is tendered for shipment, the Oil Company's relation thereto *is that of bailee, not carrier. While the quantity of oil remains in the State,* it is certainly subject to taxation as *property* by the State to the owners thereof. It could not be

subject to such taxes if it were committed to interstate commerce. It is true that the owners of the oil can never receive back the identical oil under the method of transporting it, but they are entitled to receive the same *quantity* and grade.

The delivery of oil to the Oil Company by the producers at their wells is analagous to storage of grain in warehouses and general deposits of money in banks. In the case of storage of grain in warehouses, the owners never receive back the identical grain stored; and in the case of general deposits of money in banks, the depositors never receive back the identical money deposited. In the one case, the owners receive credit for the grain stored; in the other, they receive credit for the money deposited. It cannot successfully be denied that such credits can be taxed to the owners thereof by the State as *property situated in the State* where the grain is stored and the money is deposited. This could not be done if such grain and money were committed to interstate commerce. Not being committed to interstate commerce, the oil in the present case is subject to taxation by the State to the owners thereof until committed to interstate commerce. The owners of the oil could not avoid payment of such property tax until they tendered it for shipment outside of the State and thus committed it to interstate commerce. Hence, not being committed to interstate commerce, the *quantity* of oil may be used as the measure of a tax lawfully imposed.

The essential character of the transaction determines whether state or national law applies. The act or intent of the *Oil Company* does not control or determine, because it does not own the oil and must hold it, or a like quantity and grade, in the State to await the owners' pleasure and orders. Neither does the "purpose" or "mental state" of the owners determine whether state or national law applies to the transaction.

New York Central R. Co. v. *Mohney*, ~~258~~ 252 U. S. ~~47~~, 152 64 L. ed. 502.

McCluskey v. *Marysville & N. R. Co.*, 243 U. S. 36 61 L. ed. 579.

Arkadelphia Milling Co. v. *St. Louis S. W. R. Co.*, 249 U. S. 134, 63 L. ed. 517.

General Oil Co. v. *Crane*, 209 U. S. 211, 52 L. ed. 754.

Gulf, Colorado and Santa Fe R. Co. v. *Tex.*, 204 U. S. 403, 51 L. ed. 540.

Coe v. *Errol*, 116 U. S. 517, 29 L. ed. 715.

It is true that some three or four producers of oil in West Virginia testified that at the time, and before, their oil was produced they intended (at some indefinite time) to tender it for transportation without the State, but this does not affect the essential character of the transportation from the producers' wells to the delivery points within the State of West Virginia.

In *New York Central R. Co.* v. *Mohney, supra*, this court held:

> "The mental purpose of a railway employee traveling on an annual pass, good only over a line wholly within the state, to continue his journey into another state, using another carrier to a point still within the state, where he expected to find awaiting him another pass from the first carrier which would be good for the interstate part of his journey, does not make him an interstate passenger while traveling on the first pass. * * *"

In *McCluskey* v. *Marysville & N. R. Co., supra*, where this court held that carriage by a mill company of its logs over its own railroad and in its own cars from its own timber land within the state to a tidewater point, also within the state, where such logs were then dumped into the water and sold, some of them going to points

outside the state, *was not interstate commerce.* In the opinion in that case the Court cites most of the cases relied upon by the plaintiff in error, and quotes, with approval, and adopts the language of the Circuit Court of Appeals for the Ninth Circuit in the same case, which draws the exact distinction and lays down the exact principle upon which we rely in the case at bar, namely, that the character of the transactions of the plaintiff in error is to be determined by its own part therein, and not upon subsequent disposition made of the commodity by the producer or owner. This Court adopts, with its approval, the language of the Circuit Court of Appeals as follows:

> "In the case at bar there was no initial shipment of the goods. The transportation of the poles from the forest in which they were cut to tidewater, where they were sold, was not a shipment. There was no contract of carriage, there was no bill of lading; there was no consignor or consignee. The goods were not transmitted to a carrier. The defendant mill company simply carried over its own road, on its own cars, its own goods to a market where it sold and delivered them. It has no concern with the subsequent disposition of them. It was under no obligation to deliver them to another carrier, and no other carrier was under obligation to receive them or to carry them further. The selling of the poles after the first sale by the mill company, or whether any were going outside the state, depended upon chance or the exigencies of trade. The movement of the poles did not become interstate commerce until, by the act of the purchaser thereof, the poles were started on their way to their destination in another state or country. The beginning of the transit which constitutes interstate commerce 'is defined in Coe v. Erroll to be the point of time that an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage.'" Citing

General Oil Co. v. *Crain*, 209 U. S. 211, 229, 52 L. ed. 754, 764.

The case of *Arkadelphia Milling Co.* v. *St. Louis W. R. Co. supra*, is also, in one aspect, directly in point, and that case involved the question whether movements of rough lumber from the forest to the mill points in the State of Arkansas followed by the forwarding of the finished products to points outside the State, constituted interstate commerce so as to render inapplicable the rough-material intrastate freight rates prescribed by State authority where experience indicated that ninety-five per cent of the product must and would be marketed outside the State. This Court held that the original movement of rough lumber from forest to the mills, as part of the course of business contemplated and carried out, did not itself constitute interstate commerce. It is true that in the case of *Arkadelphia Milling Company* v. *St. Louis etc. Railway*, there was also an obvious distinction from the case at bar, as that case involved the manufacture of the lumber into finished product, and re-shipment thereafter. But it also involved directly the question as to whether the *intention* of the owners, and the course of former business as to the product being intended for ultimate interstate commerce, related back to and controlled the initial movement, and in this connection *Mr. Justice* Pitney, speaking for the Court, said:

> "Where it would eventually be sold no one knew, and the fact that previous experience indicated that ninety-five per cent of it must be marketed outside of the State so that this entered into the purpose of the parties when shipping the rough-material to the mill, did not alter the character of the latter movement. The question is too well settled by previous decisions to require discussion. *Coe* v. *Erroll*, 116 U. S. 517; *Bacon* v. *Illinois*, 227 U. S. 504; *McCluskey* v. *Marysville & N. R. Co.*, 243 U. S. 36. The distinction be-

> tween these cases and those cited to sustain the decision of the District Court (*Swift & Co.* v. *United States*, 196 U. S. 375; *R. R. Commission* v. *Worthington*, 225 U. S. 101; *Texas & Nor. Co.* v. *Sabine Tram Co.*, 337 U. S. 111; *R. R. Commission* v. *Texas & Pr. Co.*, 224 U. S. 336) is so evident that particular analysis may be dispensed with."

We understand the distinction referred to by Mr. *Justice* Pitney to be, in substance, the same as that insisted upon by the defendants in error in this case, namely, that the commodity must have been actually started upon its interstate journey by some person having lawful control and authority to so dispose of it and place it in interstate commerce.

In *General Oil Co.* v. *Crain, supra*, wherein the right of the State of Tennessee to levy an inspection tax was involved, the court held:

> "Oil shipped from Pennsylvania and Ohio, and *destined ultimately* for points in Arkansas, Louisiana and Missippi, *is not property in interstate commerce*, so as to be exempt from state tax or inspection laws, while it is held at a distributing point maintained by the shipper in Tennessee, at which point such oil is unloaded from tank cars into various tanks, barrels, and other receptacles, and from which it is forwarded to its final destination."

In delivering the opinion of the court, *Mr. Justice* McKenna said:

> "As determining an affirmative answer to this question, it is contended that the oil in both tanks was in transit from the place of manufacture, Pennsylvania, to the place of sale, Arkansas. The delay at Memphis, it is urged, *was merely* for the purpose of separation, distribution and reshipment, and was no longer than required by

the nature of the business and the exigencies of transportation* * *.

"The substance of these cases is that, while the property is at rest for an indefinite time, awaiting transportation or awaiting a sale at its place of destination, or at an intermediate point, it is subject to taxation. But, if it be actually in transit to another state, it becomes the subject of interstate commerce, and is exempt from local assessment. Property, therefore, at an intermediate point between the place of shipment and ultimate destination, may cease to be a subject of interstate commerce.

"Like comment is applicable to plaintiff in error and its oil. The company was doing business in the state, and its property was receiving the protection of the state. Its oil was not in movement through the state. It had reached the destination of its first shipment, and it was held there, not in necessary delay or accommodation to the means of transportation, as in *State, Detnold, Prosecutor* v. *Engle, supra, but for the business purposes and profit of the company.* It was only there for distribution, it is said, to fulfill orders already received. *But to do this required that the property be given a locality in the state beyond a mere halting in its transportation. It required storage there,—the maintenance of the means of storage; of putting it in and taking it from storage.* The bill takes pains to allege this. 'Complainant shows that it is impossible, in the coal oil business, such as complainant carries on, to fill separately each of these small orders directly from the railroad tank cars, because of the great delay and expense in the way of freight charges incident to such a plan, and for the further reason that an extensive plant and apparatus is necessary in order to properly and conveniently unload and receive the oil from said tank cars, and it would be impracticable if not impossible, to have such apparatus and machinery at every point to which complainant ships said oil.'

"This certainly describes a business,—describes

> a purpose for which the oil is taken from transportation, *brought to rest in the state, and for which the protection of the state is necessary,—a purpose outside of the mere transportation of the oil.* The case, therefore, comes under the principle announced in *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500, 48 L. ed. 538, 24 Sup. Ct. Rep. 365." (Italics ours).

In this case, *Mr. Justice* McKenna further said:

> "The beginning and ending of the transit which constitutes interstate commerce are easy to mark. The first is defined in *Coe* v. *Erroll*, 116 U. S. 517, 29 L. ed. 715, to be the point of time that an article is committed to a carrier for transportation to the State of its destination, or started on its ultimate passage. The latter is defined to be, in *Brown* v. *Houston*, 114 U. S. 622, 29 L. ed. 257, the point of time at which it arrives at its destination."

In *Gulf, Colorado and Santa Fe R. Co.* v. *Tex., supra,* this Court again had occasion to consider the effect of the intention and purpose of the purchaser of a commodity as to reshipment as affecting the character of the commerce under which the commodity was delivered to such purchaser. The Court in this case held that the intention or purpose on the part of the owner of an interstate shipment of a car load of grain, which was shipped from Hudson, S. D., to Texarkana, Texas, to forward such car from Texarkana to another point in the State of Texas, did not so connect the second shipment with the original shipment as to constitute the second an interstate shipment, and as such, exempt from the regulations of the State Railroad Commission. The case is an important one inasmuch as *Mr. Justice* Brewer makes clear in the opinion that the character of the shipment or business transaction thereunder must be determined by it as made, and not as co-related by purpose or intention with prior or subsequent transactions.

The opinion says, in part:

> "Whatever may have been the thought or purpose of the Hardin Company in respect to the further disposition of the corn was a matter immaterial so far as the completed transportation was concerned. In this respect there is no difference between an interstate passenger and in interstate transportation. If Hardin, for instance, had purchased at Hudson a ticket for interstate carriage to Texarkana, intending all the while after he reached Texarkana to go on to Goldthwaite, he would not be entitled on his arrival at Texarkana to a new ticket from Texarkana to Goldthwaite at the proportionate fraction of the rate prescribed by the Interstate Commerce Commission for carriage from Hudson to Goldthwaite. The one contract of the railroad company having been finished, he must make a new contract for his carriage to Goldthwaite, and that would be subject to the law of the State within which that carriage was to be made.
>
> "The question may be looked at from another point of view: Supposing a car load of goods was shipped from Goldthwaite to Texarkana under a bill of lading calling for only that transportation, and supposing that the laws of Texas required, subject to penalty, that such goods should be carried in a particular kind of car—can there be any doubt that the carrier would be subject to the penalty, although it should appear that the shipper intended, after the goods had reached Texarkana to forward them to some other place outside the State? To state the question in other words,—if the only contract of shipment was for local transportation, would the State law in respect to the mode of transportation be set one side by a Federal law in respect to interestate transportation, on the ground that the shipper intended, after the contract of shipment had been completed, to forward the goods to some place outside the State? *Coe* v. *Erroll*, 116 U. S. 517."

In *Coe* v. *Erroll, supra,* in discussing when a commodity is committed to interstate commerce, *Mr. Justice* Bradley asks:

> "Do the owner's state of mind in relation to the goods, that is his intent to export them, and his partial preparation to do so, exempt them from taxation?"

Further in the opinion *Mr. Justice* Bradley quotes from the case of *The Daniel Ball,* 10 Wall. 565, "Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced," but limits and explains such quotation by saying:

> "But this movement does not begin until the articles have been shipped or started for transportation from one state to another. The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is another part of that journey. That is all preliminary work performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another State, or committed to a common carrier for transportation to such State its destination is not fixed and certain. It may be sold or otherwise disposed of within the State and never put in course of transportation out of the State. Carrying from the farm or the forest to the depot is only an interior movement of the property, entirely within the State, for the purpose, it is true, but only for the purpose of putting it into a course of exportation; it is no part of the exportation itself until shipped or started on its *final journey* out of the State. Its exportation is a matter altogether *in fieri* and not at all a fixed and certain thing."

In *New York Central R. Co. v. Mohney, supra,* in discussing what determines whether state or national law

applies to the transaction involved, *Mr. Justice* Clark said:

> "Thus, in *Coe* v. *Erroll*, 116 U. S. 517, the owner's state of mind in relation to the logs, his intent to export them, and even his partial preparation to do so, did not exempt them from state taxation, because they did not pass within the domain of the Federal law until they had 'been shipped, or entered with a common carrier for transportation to another state, or had been started upon such transportation in a continuous route or journey.'"

BUSINESS OF PLAINTIFF-IN-ERROR, UNDER CONSIDERATION, INTRASTATE—AND SO REGARDED AND TREATED BY IT.

Three. It appears from the witnesses Waller C. Hardy —Record pages 638-644, and A. G. Womack—Record pages 644-648, that the producer's oil is run from his tank into the Oil Company's line without orders to ship, transfer or sell and remains there until ordered transferred, sold or shipped. *The oil, as and when gathered is run into the Oil Company's line without the producer's consignment to any ultimate destination and the quantity thereof, of like grade, is required by law to be kept in the state in the lines and tanks of the Oil Company until the same is ordered transferred, sold or shipped by the producer or owner.* That this is the usual manner of handling the oil produced in the state is shown by the witness Womack above referred to, and the witness P. M. Doty—Record pages 653-657: That "tenders of shipment" are practically unknown to the general class of producers is shown by the witness Womack, page 648, where the following questions were propounded and answered:

"Q. Mr. Womack, did any of your companies at any time ever make a so-called tender, or offer of tender of

shipment of their oil to The Eureka Pipe Line Company?

A. I do not understand your question; do you mean—have any of our companies ever offered—

Q. (Interrupting.) Made what is shown in this case to be called a tender or offer of tender directing the shipment or consignment of oil to their credit to some given assignee, either within or without the State of West Virginia?

Counsel for plaintiffs objected to the foregoing question.

A. No, sir.

Q. Did you ever see a tender of offer of shipment?

A. No, sir.

Q. Do you know exactly what one is?

A. No, sir, I do not."

Indeed it appears that the oil tendered for interstate shipment under I. C. C. joint tariffs from Morgantown and other such tariff points was so tendered, during the year in question, by the South Penn Oil Company, Carter Oil Company, Hope Natural Gas Company, Pittsburgh Oil Refining Company, Island Petroleum Company, Atlantic Refinery Company and Ohio Cities Gas Company—Plaintiffs Exhibit No. 65, page 679.

Chapter 62 C of the Code of West Virginia, relating to the Transportation of Petroleum &c., appears in the Record, pages 50-61: Sections 14 and 16 thereof are as follows:

> "14. No company, its officers or agents, or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or encumber, ship, transfer, or in any manner remove or procure, or permit to be sold, encumbered, shipped, transferred, or in any manner removed from the tanks or pipes of said company engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or owners thereof."

"16. All amounts in the statements required by this act, when the petroleum is handled in bulk, shall be given in barrels and hundredths of barrels reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels or packages, the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum, and give the amount of each. Every company engaged in the business aforesaid, shall at all times have in their pipes and tanks an amount of merchantable oil equal to the aggregate of outstanding receipts, certificates, accepted orders, vouchers, acknowledgments, evidences of liability, and credit balances, on the books thereof."

We submit that the oil produced in the state is and was *stored* by the Oil Company, notwithstanding the fine distinctions respecting storage drawn by counsel for the Oil Company. True, the identical oil might have passed on, but until the producer or owner has transferred, sold or shipped it, it is *his* oil, and under the statute above quoted he is entitled to the same quantity of the same grade as the oil run from his tank into the pipe line. It can not be shipped, transferred or removed without his written consent. If the owner demands the oil delivered to him in kind, in quantity and grade at the Parkersburg, Saint Marys, or Elk Refineries, or at other delivery points in the state, he is entitled thereto at such points. Until the owner has transferred or sold his oil, although it might have been run months before, he is entitled to his quantity, according to its grade, and is the owner thereof, and the joint owner with others of the oil in the lines and tanks, as the owner of wheat, in an elevator, is the owner of his quantity and the joint owner with others, of all of the wheat in the elevator, in quantity and grade, although the identical wheat, placed there by him months before, has been sold and removed therefrom. Indeed, as we have said, there is a strong analogy in the law applicable

to a proprietor of a public warehouse, and the grain stored therein, and the oil pipe line and the oil stored therein.

In *Yockey* v. *Smith*, 181 Ill. 564, 72 Am. St. Rep. 286, it was held:

> "Proprietors of public warehouses do not become the owners of grain stored therein, but are mere custodians, charged with the duty to restore the quantity and quality of such grain as that received. Grain stored in warehouses under a contract, that it shall be subject to the order and control of the depositor, remains his property and cannot be seized and sold for the debts of the warehouseman, whether the warehouse be a public or private one."

In *Drudge* v. *Lightner*, 18 Ind. App. 694, 63 Am. St. Rep. 359, it was held:

> "Where a warehouseman receives grain and mixes it with his grain, or that of others, and is engaged in selling the grain so mixed, the various owners of the grains are tenants in common of the entire quantity of the commingled grain. A depositor of grain in a common receptacle until he withdraws or transfers his grain, is a tenant in common not only while his grain is in the common store, but also as long as any grain is in the common store."

Section 7 of said Chapter 62 C, reads as follows, (Italics are ours):

> "Any company engaged in transporting petroleum of a gravity exceeding thirty-five degrees Baume at a temperature of sixty degrees Fahrenheit, by means of pipe line or lines, may charge for receiving, transporting and delivering such petroleum not to exceed twenty cents per barrel for each barrel of forty-two gallons; *Provided, however, if where the point of delivery is without this State, more than twenty cents per barrel*

be charged, then there shall be charged no greater sum than ten cents per barrel for receiving such oil and transporting the same that part of the distance which is within this State."

The Oil Company charged and collected the entire charge of twenty cents a barrel for gathering, storing and delivering oil produced in the state to the three refineries mentioned above as well as to Morgantown and other points where tenders of shipment were made for carriage by the Oil Company and interstate connecting carriers. The Tariff covering this charge of twenty cents was filed by the Oil Company with the Public Service Commission of West Virginia under the section above quoted and not under or pursuant to an order of the Public Service Commission of West Virginia, upon a hearing, allowing such charge. Wherefore, we submit, that the Oil Company regarded and treated the business of so gathering, storing and transferring as one of delivering *within* the state—an intrastate business—and collected the *entire intrastate rate or charge*: And the producers, owners or shippers likewise regarded said business and submitted to and paid the charge. That the Oil Company did so charge twenty cents a barrel for so gathering and delivering 6,246,408.75 barrels to such points during the year in question appears in its "Exhibit 4" page 664 of the Record; whereby it, as well as the producers, owners or shippers, have given a practical answer to the Oil Company's contentions here.

Respecting the business of the Oil Company under consideration here we submit that the principles announced by this court in the case of *New York, at the relation of the Pennsylvania R. R. Co.* v. *Knight*, 192 U. S. 20, 48 L. Ed. 325, are decisive and controlling.

The statement of the case as made by Mr. *Justice* Brewer is as follows:

"This is a writ of error to the supreme court of the state of New York to review a judgment of that court affirming the assessment by the comptroller of the state of New York of a certain tax against the relator, the Pennsylvania Railroad Company. The contention of the plaintiff in error is that the tax, which is a franchise tax imposed under appropriate statutes of New York upon the company for carrying on the business of running cabs and carriages for hire between points entirely within the state of New York, is invalid under the interstate commerce clause of the Constitution of the United States, Article 1, Section 8, sub-division 3.

"The facts are undisputed. In 1897 the company established a cab stand on its own premises at the Twenty-third Street ferry in the city of New York, and has since maintained a service of cabs and coaches under special licenses from the city of New York, whereby they can stand on those premises only. The sole business done by those cabs and coaches is to bring the company's passengers to and from the Twenty-third street ferry. The charges for this service are separate from those of the company for further transportation and no part of its receipts from the cab service is received as compensation for any service outside the state of New York. As a separate business, this cab service has not been profitable to the company, but has been operated at a loss. The validity of this tax was sustained both by the supreme court and the court of appeals of New York."

The Supreme Court of the United States affirmed the decision of the court below and sustained the tax.

The Court, in the opinion, in part said:

"The contention of the company is that this cab service is merely an extension, and therefore a part of, its interstate transportation; that it is not carrying on a cab business generally in the city of New York, but is merely furnishing the ser-

vice to those who seek to take over its lines some interstate transportation, thus commencing the transportation from their house instead of from the ferry landing, or like service to those who have already received such interstate transportation, thus completing the transportation to their places of destination; that the character of the business remains unchanged, although individuals may avail themselves of this service who do not intend or have not received any interstate transportation, for they who thus use the service do so wrongfully and against the wish of the company. In other words, the company, to promote its general business, seeks only to complete the continuous transportation of interstate passengers to or from their residences or hotels in New York City instead of commencing and ending such transportation at the ferry landing at Twenty-third street; the character of the service depends not on the action of the passenger, but on the purpose of the company in providing it and the omission to include the charge for the cab service in the charges for other transportation arises from the practical difficulty of making such inclusion, and does not alter the fact that such cab service is a part of the interstate transportation. ********** It is true that a passenger over the Pennsylvania Railroad to the city of New York does not, in one sense, fully complete his journey when he reaches the ferry landing on the New York side, but only when he is delivered at his temporary or permanent stopping place in the city. Looking at it from this standpoint, the company's cab service is simply one element in a continuous interstate transportation, and as such would be excluded from state, and be subject to national, control. The state may not tax for the privilege of doing an interstate commerce business. Atlantic & P. Teleg. Co. v. Philadelphia, 190 U. S. 160, 47, L. ed. 95, 233 Sup. Ct. Rep. 817. On the other hand, the cab service is exclusively rendered within the limits of the city. It is contracted and paid for independently of any contract or payment for strictly inter-

state transportation. The party receiving it owes no legal duty of crossing the state line. ************ As we have seen, the cab service is rendered wholly within the state, and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto. It is independently contracted for, and not necessarily connected therewith. But when service is wholly within a state it is presumably subject to state control. The burden is on him who asserts that, though actually within, it is legally outside, the state; and unless the interstate character is established, locality determines the question of jurisdiction. *Coe v. Errol,* 116 U. S. 517, 29 L. ed. 715, 6 Sup. Ct. Rep. 475, though not in all respects similar, is very closely in point. In that case spruce logs had been drawn down from Wentworth's Location in New Hampshire, and placed in Clear Stream, also in New Hampshire, to be from thence floated down the Androscoggin river to the state of Maine, there to be manufactured and sold. After they had thus been drawn down and placed in Clear Stream, a tax was imposed upon them by the State of New Hampshire. The validity of that tax was challenged on the ground that the logs were in process of transportation from Wentworth's Location in New Hampshire to the state of Maine. It was sustained by the Supreme Court of New Hampshire, and also by this court. In the course of the opinion of Mr. Justice Bradley are these pertinent observations (p. 528 L. ed. 719, Sup. Ct. Rep. p. 479):

"It is true, it was said in the case of *The Daniel Ball,* 10 Wall. 557, 565, 19 L. ed. 999, 1002: 'Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced.' But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is

to commence, is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another state, or committed to a common carrier for transportation to such state, its destination is not fixed and certain. It may be sold or otherwise disposed of within the state, and never put in course of transportation out of the state. Carrying in from the farm, or the forest, to the depot, is only an interior movement of the property, entirely within the state, for the purpose, it is true, but only for the purpose of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the state its exportation is a matter altogether in fieri, and not at all a fixed and certain thing.'' '

AUTHORITIES RELIED UPON BY PLAINTIFF-IN-ERROR.

A very few of the authorities cited by counsel for plaintiff-in-error have any bearing on the narrow issue involved in this case, we submit, and many of them are not applicable at all to the principle involved under the facts here. We will, therefore, only consider those cases cited by counsel for plaintiff in error which in the abstract might have some bearing here.

In *Western Oil Refining Co. v. Lipscomb,* 244 U. S. 346, the plaintiff company, an Indiana corporation, shipped from its refinery in Illinois into the State of Tennessee exactly the proper quality of oil and the number of barrels necessary to fill orders previously taken in Tennessee by its traveling salesmen. This court held that the fact that the cars were first billed to one town in Tennessee, where orders had been taken and which were filled and was then rebilled to another town, where such orders had been taken and were filled, was an inter-

state transaction and that such business could not be subjected to the payment of the privilege tax by the State of Tennessee, holding that the rebilling on route did not of itself break the continuity of the movement or require that any part be classified differently from the remainder.

R. R. Commission v. Worthington, 225 U. S. 101, is distinguished by *Mr. Justice* Clark in *New York Central R. Co. v. Mohney,* as follows:

> "In *R. R. Commission v. Worthington,* 225 U. S. 101, the Commission attempted to regulate the rate on 'Lake Cargo Coal' because it was often billed from the mines to Huron or other ports within the State, but this Court found that the established 'Lake Cargo Coal' rate was intended to apply, and in practice did apply, only 'to such coal as was in fact placed on vessels for carriage beyond the State', and obviously, 'by every fair test, transportation of this coal from the mines to upper Lake ports is an interstate carriage.' For this reason the enforcement of the order of the State Commission was enjoined as an attempt to regulate and control interstate commerce. Here, again, it was the committing of a designated kind of coal to a carrier for transportation in interstate commerce that rendered the Federal law applicable."

The Worthington Case decided, in addition to the question of this Court's jurisdiction, but a single question, namely, whether the Railroad Commission of Ohio had jurisdiction to fix a rate covering shipments of "Lake Cargo Coal," that is coal intended for shipment by lake to points outside of the State of Ohio from the district in which such coal was mined to Huron and Cleveland, Ohio. The jurisdiction of such Commission to fix such rate was denied by this Court upon the ground that on the facts as found by the Circuit Court and afterwards by the Circuit Court of Appeals and this Court,

the shipments covered by such rate were plainly interstate shipments. This was the only question before or considered by this Court, and an examination of the facts so found make it clear beyond question that the rate there involved plainly included, in addition to rail transportation to Huron and Cleveland, the service of unloading the coal from the cars in the vessels and trimming it in the holds of vessels for continuous transportation for points beyond the State of Ohio. The rate purported to apply to such Lake Cargo coal, including loading on vessels and trimming it in the holds of such vessels only, and in case any of such coal was diverted *en route* and devoted to some other purpose, as, for instance, commercial use at Huron, there was another and different intrastate rate prescribed by the Ohio Commission, which was not involved or considered in the case.

This was the only coal, the only shipments and the only rate in any way involved in this case, although it was stated that it might be that after being so loaded and trimmed on vessels a quantity of the coal, so small as to be negligible, was unloaded on one of the Ohio Islands in Lake Erie, but no substantial importance was claimed by any of the litigants from this circumstance, nor could it have been given to it. The question involved was purely one of fact and this Court, after approving the finding of facts made by the Circuit Court and Circuit Court of Appeals, said:

> "It is true that the shipper transports the coal ordinarily upon bills of lading to himself, or to another for himself at Huron on Lake Erie, The so-called "Lake Cargo Coal" is necessarily shipped beyond Huron. If it stops there, another and higher rate applies. Practically all of it is put on vessels for carriage beyond the State, usually to upper Lake ports, and then, *and only then*, the seventy cent rate fixed by the Commission applies. *This seventy cent rate covers the*

transportation of the coal to Huron, the placing of it on board vessels, and if necessary trimming it for the continuance of its interstate journey. It is true, as argued by the learned counsel for the Commission, that this coal may be accumulated in large quantities at Huron and only taken out of the accumulated lots from time to time when it is to be put upon vessels and shipped out of the State, but it must always be remembered that this seventy cent rate applies *solely* to such coal as is in fact placed upon vessels for carriage to beyond the State points; and as the Circuit Court said, the substance of things is not changed by the fact that a small part may be unloaded at one of the Ohio Islands in Lake Erie. The situation then comes to this: that the rate put in force is applicable only to coal which is to be carried from the mine in Ohio to the lake, there placed upon vessels, and thence carried to upper lake ports beyond the State. By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such, and the rate fixed by the Commission which is in controversy here, is applicable *alone* to coal which is thus, from the beginning to the end of its transportation in interstate carriage and such rate is intended to and does cover an integral part of that carriage, the transportation from the mine to the Lake Erie port, the placing upon the vessel and the trimming or distributing in the hold, if required, so that the vessel may complete such interstate carriage."

That case emphasizes the distinction upon which we rely, namely, that it is the character of the transaction at a given time which determines the character of the commerce as being intrastate or interstate at such given time. In the Worthington case, a *single rate was charged,* and the carrier was obligated *therefor* to transport the commodity in question from one point in the State of Ohio to another, and then load upon vessels, which were

supplied for an interstate journey, trim the coal in the holds, and in all respects, place the commodity in shape for continued and continuous interstate carriage.

In *Swift & Co. v. United States*, 196 U. S. 375, this Court simply decided, so far as any question of interstate commerce is concerned, that trading in fresh meat was sufficiently shown to be commerce among the States, protected from restraint by the Act of July 2, 1890, by allegations in a bill filed by the United States which charged certain meat dealers with violations of that Act, which, even if such allegations imported a technical passing of the title at slaughtering places in cases of sales also imported that the *sales themselves were to persons in other states*, and that the shipment to other states are pursuant to such sales, and, by allegations, charging sales of such meat by their agents in other states, which indicate that some of such sales were made in the original packages.

Southern P. Terminal Co. v. *Interstate Commerce Commission*, 219 U. S. 498, is distinguished by *Mr. Justice* Clark in *New York Central R. Co. v. Mohney, supra*, as follows:

> "In *Southern P. Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, the cottonseed cake and meal, although billed to Galveston, were 'all destined for export, and by their delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination * * *. The case, therefore, comes under *Coe v. Erroll, supra.*' The mental purpose of Young and his attempted practice by intrastate billing was to keep within the domain of the state law; but his contracts, express and implied, brought the discrimiation complained of in the case within the scope of the Interstate Commerce Act."

In *R. R. Commission of Louisiana* v. *T. & P. Ry. Co.*, 229 U. S. 336, this Court held that the facts of the case brought it within the sphere of the decisions in *Southern P. Terminal Co. v. Interstate Commerce Commission, supra, Railroad Commission v. Worthington, supra,* and *Texas & New Orleans R. R. Co.* v. *Sabine Tram Co., supra.*

This case involved certain orders of the Louisiana Railroad Commission. The logs and staves in question were shipped on a local tariff to the city of New Orleans. In one case, the consignee, at the date of the shipment of the freight, resided at New Orleans, and *was engaged in the business of shipping broker in negotiating for cargo space, routes and attending to shipments for consignors in the United States.* In the other case, the consignees *were engaged at New Orleans in the business of exporting staves to foreign countries,* and ninety-eight per cent of the shipments by them at New Orleans were exported to foreign countries.

At the time of the shipments, the rules of the State Railroad Commission allowed four days' free time for unloading cars at New Orleans, except where the consignment was for export, then twenty days were allowed. *No demurrage was tendered by the shipper or consignee, or received by the carrier on account of delays in handling beyond the four days allowed by the rule.* Everyone of the shipments paid to the carrier three-fourths of a cent per hundred pounds for handling charges, *this being the amount paid on all export shipments.* The shipments were in the physical custody of the railroad company until arrival at New Orleans, and thereafter in the physical custody of the steamships, which issued bills of lading therefor to the shippers of the cargo.

The bills of lading in each instance provided for the delivery of freight from the initial point to New Orleans, there to be delivered to the shipper or consignee's

order. *But notwithstanding this*, the staves and logs were intended by the shippers to be exported to foreign countries, and were treated by both the shippers and the carriers accordingly, *the shippers always holding the cars on the railroad tracks until they could accumulate cargo to fill their export orders and arrange for transportation.* The railroad company allowed the shippers the usual twenty days' time for delivery, as in the case of export shipments, without charging demurrage, which the company would have had the right to charge, after the expiration of four days, if the shipments had been considered and treated as purely intrastate. This Court, under the facts of the case, held that the shipments constituted foreign commerce.

It is true that this court in *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23, held that gas from the state of Pennsylvania which reached New York consumers was in interstate commerce "from the beginning to the end of its transportation," yet the court upheld the right of the Public Service Commission of the State of New York to regulate rates at which such gas shall be furnished to consumers in the city of Jamestown, New York. In the opinion *Mr. Justice* Day says at pages 30-31:

> "The thing which the State Commission has undertaken to regulate, while part of an interstate transmission, is local in its nature, and pertains to the furnishing of natural gas to local consumers within the city of Jamestown, in the state of New York. The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the state; nevertheless the service rendered is essentially local, and the sale of gas is by the company to local consumers, who are reached by the use of the streets of the city in which the pipes are laid, and through which the gas is conducted to factories and residences as it is required for use.

The service is similar to that of a local plant furnishing gas to consumers in a city.

"This local service is not of that character which requires general and uniform regulation of rates by congressional action, and which has always been held beyond the power of the states, although Congress has not legislated upon the subject. While the manner in which the business is conducted is part of interstate commerce, its regulation in the distribution of gas to the local consumers is required in the public interest, and has not been attempted under the superior authority of Congress.

"It may be conceded that the local rates may affect the interstate business of the company. But this fact does not prevent the state from making local regulations of a reasonable character. Such regulations are always subject to the exercise of authority by Congress, enabling it to exert its superior power under the commerce clause of the Constitution."

We have endeavored in this brief to point out that the business of the Oil Company under consideration here, was a local service—intrastate business—under a local or intrastate tariff.

In *Bratch* v. *San Antonio &c. Ry Co.*, 254 U. S. 489, the plaintiff delivered to the defendant at Ingleside, Texas, a carload of vegetables consigned to himself at Dallas, Texas, where he intended to sell them. Upon arrival at Dallas, the car at plaintiff's request, was forwarded by the M. K. & T. Railway to Kansas City, it issuing an interstate bill of lading therefor over its lines. Upon arrival of the car at Kansas City the contents were found in bad condition and plaintiff sued the initial carrier under the Carmack Amendment to the Interstate Commerce Act. The plaintiff was denied the right to recover against the initial carrier. We submit, under the facts in the case at bar, that the business in question here was not really but part of an interstate movement, "reasonably

to be anticipated" by the great number of producers of oil in West Virginia, even though by subsequent sales thereof and otherwise a greater part of all of the oil of such producers, gathered by the Oil Company was shipped out of the state.

In *Standard Oil Co.* v. *Graves*, 249 U. S. 389, the court had under consideration the State Oil Inspection law of the State of Washington. We understand that the proposition decided and applied in this case is, that the statute imposed inspection fees grossly in excess of the cost of inspection, the payment thereof being required before the sale of any of the commodities subject to such inspection; that the plaintiff shipped its products from California to the State of Washington and claimed the right to sell the same in original packages, &c., without payment of the inspection fees. The court sustained the contention of the plaintiff. We cannot see where the proposition passed upon by the court has application to the case at bar.

In *Bacon* v. *Illinois*, 227 U. S. 504, the court had under consideration the question whether certain grain was subject to local taxation. At page 515 *Mr. Justice* Hughes said:

> "The following facts are shown by the agreed statement:—The grain had been shipped by the original owners, who were residents of southern and western states, under contracts for its transportation to New York, Philadelphia, and other eastern cities, which reserved to the owners the right to remove it from the cars at Chicago 'for the mere temporary purposes of inspecting, weighing, cleaning, clipping, crying, sacking, grading, or mixing, or changing the ownership, consignee, or destination' thereof. While the grain was in transit it was purchased by Bacon, the plaintiff in error, who succeeded to the rights of the vendors under the contracts of shipment. He was represented at the points of destination by agents

through whom he disposed of grain and other commodities on the eastern markets, and the grain in question was purchased by him solely for the purpose of being sold in this way, and with the intention to forward it according to the shipping contracts; it was not his intention to dispose of it in Illinois. Upon the arrival of the grain in Chicago, Bacon availed himself of the privilege reserved and removed it from the cars to his private elevator. This removal, it is said in the agreed statement of facts, was for the sole purpose of inspecting, weighing, grading, mixing etc., and not for the purpose of changing its ownership, consignee, or destination. It is added that the grain remained in the elevator only for such time as was reasonably necessary for the purposes above mentioned, and that immediately after these had been accomplished it was turned over to the railroad companies, and was forwarded by them to the eastern cities, in accordance with the original contracts of transportation. No part of the grain was sold or consumed in Illinois. It was while it was in Bacon's elevator in Chicago that it was included in the assessment as a part of his personal property."

The court held that the grain was subject to local taxation: And we submit that in view of the facts shown by the record in respect to the business of the Oil Company under consideration in the case at bar, that Bacon v. Illinois tends to defeat, rather than to support, the contentions of the Oil Company.

ALL OIL MINGLED IN A COMMON STOCK.

It is conceded by plaintiff in error that in the pipe line business as conducted by it, all oil of a particular grade is received in the same pipes and tanks, and is there intermingled without distinction of ownership, and deliveries and shipments are made out of the common stock of oil of that grade in its possession.

This being true, and it appearing that the Oil Company has at all times in its tanks and pipe lines in West Virginia oil of the Pennsylvania grade which it *holds on storage as bailee* subject to the orders of the owners thereof, *and which has no ascertainable destination at the time* although a part thereof may be destined for shipment outside of the State; and that as oil which is being produced from time to time becomes intermingled and incorporated with, and a part of, *this mass of oil which is stored and held in the State,* it is taken out of the operation of Federal law, *as no ascertainable mass of oil is consigned from one state to a terminus in another.* In other words, the oil thus being produced in the State of West Virginia becomes incorporated with and a part of the mass of oil already on storage in the State, and thereby loses its identity as a commodity committed to interstate commerce, *even though intended* for shipment outside of the State; *and it does not therefore become committed to interstate commerce until there is a separation from the mass of oil within the State and it is started forward from the State to an ascertained destination or terminus in another State.*

In this connection, attention is called to the fact that under the interstate joint tariffs of the Oil Company, it will not receive tenders of shipment of oil for points outside of the State in less quantity than 75,000 barrels, (except at two or three small tariff or delivery points), and that the owner must accumulate a "batch" of 75,000 barrels, except as aforesaid, before it will start any part thereof on an interstate journey. To explain,—while the Oil Company will "gather" any quantity of oil from the producers' wells, yet it will not receive for interstate shipment a less quantity than 75,000 barrels, except as aforesaid. It necessarily follows that the essential character of the business of the Oil Company requires storage of oil in the State for re-shipment until

a "batch" of 75,000 barrels, except as aforesaid, is accumulated by the person tendering it for shipment.

Franke v. Johnstown Fuel Supply Co., 70 Pa. Sup. Ct. Rep., 446;
Brown v. Houston, 114 U. S. 622, 29 L. ed. 257;
Pittsburgh Coal Co. v. Bates, 156 U. S. 577, 39 L. ed. 538;
Bowman v. Continental Oil Co., Adv. Sheets, July 15, 1921, p. 70;
May v. New Orleans, 178 U. S. 496, 44 L. ed. 165.

CONCLUSION

It is respectfully submitted that the writ of error should be dismissed, the writ of certiorari be denied and the decree complained of be affirmed.

E. T. England,
Attorney General of West Virginia,

S. B. Avis,
Fred O. Blue,
Wm. Gordon Mathews,
Counsel for the defendants-in-error.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

THE EUREKA PIPE LINE COMPANY, a corporation, Plaintiff Below, Plaintiff in Error, vs. WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. ENGLAND, Attorney General of the State of West Virginia, Defendants Below, Defendants in Error.	No. 805 on writ of error.

Sirs:

You, as counsel for the Plaintiff in Error, will please take notice that we, the Defendants in Error, shall move the motions hereto annexed, before the Supreme Court of the United States, at the Capitol, in the City of Washington, District of Columbia, on Monday, the 2nd day of May, 1921, at the opening of the Court on that day, or as soon thereafter as counsel can be heard.

Dated at Charleston, West Virginia, this 14th day of April, 1921.

J. B. Davis

Fred O. Blue

Wm Gordon Mathews

Counsel for Defendants in Error.

To Messrs:
JAMES L. BECK,
FRANK L. CRAWFORD,
Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

THE EUREKA PIPE LINE COMPANY, a corporation, Plaintiff Below, Plaintiff in Error, vs. WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. ENGLAND, Attorney General of the State of West Virginia, Defendants Below, Defendants in Error.	No. 805

MOTIONS OF DEFENDANTS TO ADVANCE AND THAT THIS CASE BE HEARD TOGETHER WITH THE CASE OF THE UNITED FUEL GAS COMPANY, A CORPORATION, AGAINST WALTER S. HALLANAN, STATE TAX COMMISSIONER, AND E. T. ENGLAND, ATTORNEY GENERAL.

The Defendants, Defendants in Error, respectfully move this court as follows:

FIRST.

That the submission and hearing of this case be ordered advanced and that it be submitted and heard at the earliest date which the convenience and the docket of this Honorable Court will permit. As reasons for this motion said Defendants respectfully show:

(a) That this case involves the validity of a revenue statute enacted by the State of West Virginia, to-wit, chapter 5 of the Acts of the Legislature of the State of West Virginia at the Extraordinary Session thereof in the year 1919, imposing a privilege tax on persons, firms and corporations engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines in said State of West Virginia and making provisions for the collection of such tax.

(b) Said statute became effective and applied to the fiscal year commencing July 1st, 1919, and each succeeding year, and the revenues to be derived by said state therefrom as a privilege tax from the corporations affected thereby, were and are estimated to be approximately $400,000.00, as said statute has been construed by the Supreme Court of Appeals of West Virginia as limited to intrastate commerce only, as carried on by said corporations, and as so construed and limited, has been upheld by said court.

(c) Said revenues under said statute have been by the institution of this suit, and other suits, wholly suspended for the fiscal years commencing July 1, 1919, and July 1, 1920, and will be suspended and cannot be collected pending the final determination of such litigation and the judgment of this Honorable Court as to the validity of said statute, as so construed by the Supreme Court of Appeals of the State of West Virginia.

(d) Since the institution of this litigation the State of West Virginia and the Legislature thereof have been and continue to be seriously embarrassed and handicapped by uncertainty as to the validity of said statute, and also in determining what other and additional revenues are

necessary to meet the expenditures of said state. The uncertainty as to the validity of said statute, as a means of itself producing revenue, and the necessity for the enactment of other and similar legislation, the validity of which would be dependent upon the validity of said statute, can only be determined by the final judgment of this Honorable Court herein.

(e) Because it appears from the message of the Governor of West Virginia to the Legislature of said State, which Legislature is now in session, and also from the Budget Bill prepared in accordance with the constitution of said State and submitted to said Legislature, that said state is now confronted with a very large deficit, estimated to be as of June 30, 1921, approximately $1,300,000.00. This deficit, as appears from said message and Budget Bill is in large part due, first to the inability of said state to collect any part of the privilege tax provided by said chapter 5 of the Acts of the Legislature of 1919, Extraordinary Session, on account of the pendency of this litigation, and secondly, because said Supreme Court of Appeals of the State of West Virginia construed and limited said statute as applicable only to the intrastate business done by the corporations subject thereto, thus greatly reducing the estimated amount expected to be derived from said privilege tax. It is therefore apparent that an early decision of this Honorable Court as to the validity of said statute, is essentially important to the State of West Virginia, both in order that it may collect the taxes properly collectible under said statute, and also to enable it to determine what other and additional legislation and taxation is necessary to raise revenues sufficient to meet the necessary state expenditures.

For these reasons these Defendants respectfully move this Honorable Court that this case be advanced and set

for hearing at such early date as the convenience of the Court and the condition of its docket will permit.

SECOND.

Said Defendants also respectfully move this Honorable Court that this case be ordered heard together with the case of the United Fuel Gas Company, a corporation, Plaintiff below, Plaintiff in error, against Walter S. Hallanan, State Tax Commissioner, and E. T. England, Attorney General, No. 835, pending in this court upon writ of error awarded to the Supreme Court of Appeals of the State of West Virginia.

Said Defendants, in support of this motion that said cases be heard together, respectfully show that the two cases involve the validity of the same statute of West Virginia which is attacked therein upon substantially identical grounds. The bills of complaint, aside from differences in description of details of the businesses carried on by the Plaintiffs therein, respectively, make substantially the same allegations and attack the validity of said statute for the same alleged conflicts with the Federal constitution; the answers, while in parts varied to conform to the verbiage of the respective bills, are substantially similar, and in those parts affirmatively justifying the statute and its enactment are alike; said cases were heard, argued and submitted together in the Circuit Court of Kanawha County, West Virginia, and also in the Supreme Court of Appeals of the State of West Virginia, and while separate orders were entered in both courts, yet but one opinion was rendered in both cases by said Supreme Court of Appeals. Under these circumstances the Defendants believe, and respectfully submit, that a proper and typical

case is presented for an order directing that these cases be heard and submitted together.

E. T. ENGLAND,
Attorney General of West Virginia,
WALTER S. HALLANAN,
State Tax Commissioner of West Virginia,
By Counsel.

S. B. AVIS,
FRED O. BLUE,
WM. GORDON MATHEWS,
Counsel.

FILED
APR 20 1921
JAMES D. MAHER
CLERK

No. [redacted]255 October Term, 1920.

IN THE
SUPREME COURT OF THE UNITED STATES.

THE EUREKA PIPE LINE COMPANY,
a corporation,
Plaintiff-in-Error,

AGAINST

WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. ENGLAND, Attorney General of the State of West Virginia,
Defendants-in-Error.

Reply of Plaintiff-in-Error to Motion of Defendants-in-Error to Advance the Case.

Plaintiff-in-Error respectfully joins in the motion made by Defendants-in-Error to advance this cause and assign it for argument at an early date, but prays that such date may not be before the beginning of the next October Term, because the length of the record and the proper discussion of the questions involved will require a longer preparation than would be possible if the case were set for any day during the present term.

JAMES M. BECK,
FRANK L. CRAWFORD,
Counsel for Plaintiff-in-Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

THE EUREKA PIPE LINE COMPANY, Petitioner, AGAINST WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. ENGLAND, Attorney General of the State of West Virginia, Respondents.	No. 805.

Dear Sirs:

PLEASE TAKE NOTICE that upon the annexed petition of The Eureka Pipe Line Company, a certified copy of the stipulated transcript of the record of this cause, including the proceedings in the Supreme Court of Appeals of West Virginia, submitted herewith, and on the petitioner's brief also to be submitted upon the presentation of the petition, an application will be made to the Supreme Court of the United States, at a term of said court appointed to be held at the Capitol, Washington, D. C., on Monday, the second day of May, 1921, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for a writ of certiorari to be directed to the Supreme Court of Appeals of the State of West Virginia, to review the decree and judgment of said Court rendered in the above cause on

the 26th day of November, 1920, and made absolute and final by an order of said Court entered on the 12th day of January, 1921, to the end that the said final decree of the said Supreme Court of Appeals of West Virginia, in so far only as it adjudged that the decree of the Circuit Court of Kanawha County, West Virginia, pronounced in the said cause on the 8th day of September, 1920, should be set aside, reversed and annulled, and that the petitioner pay to the respondents (appellants below) their costs about the prosecution of their appeal to the said Supreme Court of Appeals, be reversed and set aside and that such further proceedings in said cause shall be had as to justice shall appertain.

Dated, New York, N. Y., April 1, 1921.

JAMES M. BECK,
FRANK L. CRAWFORD,
Counsel for Petitioner,
32 Liberty Street,
New York City.

To:

HON. WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia,

HON. E. T. ENGLAND, Attorney General of the State of West Virginia,

Respondents in Person.

To:

HON. E. T. ENGLAND, Attorney General of the State of West Virginia,

HON. JOHN T. SIMMS, Counsel State Tax Commissioner's Office, of the State of West Virginia,

Attorneys for Respondents.

S. B. AVIS, ESQ.,
W. GORDON MATTHEWS, ESQ.,
FRED O. BLUE, ESQ.,
Special Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

THE EUREKA PIPE LINE COMPANY, Petitioner, AGAINST WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. ENGLAND, Attorney General of the State of West Virginia, Respondents.	No. 805.

Petition for Certiorari to the Supreme Court of Appeals of the State of West Virginia.

To the Honorable The Supreme Court of the United States:

The petition of The Eureka Pipe Line Company, a West Virginia corporation, respectfully shows to the Court as follows:

1. On the 26th day of November, 1920, a decree was made and entered by the Supreme Court of Appeals of West Virginia (that being the highest court of that state), affirming in part and reversing in part a decree made and entered by the Circuit Court of Kanawha County, West Virginia, on the 8th day of September, 1920, in a suit in equity wherein the petitioner was plaintiff and the respondents were defendants, which decree

first named (having been suspended pending your petitioner's application for a rehearing) was made absolute and final by an order of said Supreme Court of Appeals entered January 12, 1921, denying the petition for a rehearing.

2. *A writ of error directed to said Supreme Court of Appeals of West Virginia to review its said final decree, has been allowed by the Chief Justice of the United States upon a petition filed by this petitioner.* A supersedeas bond given by petitioner has been approved, and a writ of error and a citation thereon have been issued, served and returned to this Court in accordance with law. But on further consideration of the facts in the cause, and of the statute in such case made and provided, petitioner is in doubt as to whether a writ of error was the proper remedy for petitioner in the premises, and for greater certainty prays for a writ of certiorari to the Supreme Court of Appeals of West Virginia, to bring up its said final decree for review in this Court.

Essential Facts.

3. The bill of complaint prayed for an injunction restraining defendants (respondents here) from enforcing against plaintiff (petitioner here) a statute of West Virginia, entitled Chapter 5 (House Bill No. 3) of the Acts of the Legislature of West Virginia, Extraordinary Session of 1919, which Act, among other things, in substance imposed upon all persons engaged in said State in the transportation of crude oil by pipe lines, an annual privilege tax of two cents for each barrel of crude oil transported by them within the State; and further said bill prayed that the Act be adjudged unconstitutional and void as to your petitioner, on the ground that it was repugnant to the Constitution of the

United States, and particularly to Section 8 of Article I thereof, and to the Fourteenth Amendment thereto. The answer denied that the Act violated the Constitution of the United States. The decree of the Circuit Court granted the prayer of the bill, and adjudged in substance that the Act was wholly unconstitutional and void under the Federal Constitution, as to petitioner, its property, franchises and business. The defendants below (respondents here) appealed from the decree of the Circuit Court to the said Supreme Court of Appeals. On the arguments in both Courts, your petitioner urged Federal claims based upon all the above mentioned grounds of constitutionality.

4. The final decree of the Supreme Court of Appeals reversed the decree of the Circuit Court to the extent only that the latter decree enjoins defendants below (respondents here) from enforcing against your petitioner "the provisions of said Act in so far as the same apply to intrastate commerce *as defined by the written opinion*" of the Supreme Court of Appeals filed in the cause; and adjudged that the Act should be construed as applying only to intrastate commerce *as so defined*, and that as so construed it was valid as to, and lawfully applicable to, the transportation of crude oil of Pennsylvania Grade produced in West Virginia, gathered by petitioner, transported by it through West Virginia to or near to, the State line, and there delivered to connecting carriers, by which it was transported into and through Pennsylvania.

5. The Supreme Court of Appeals held that all of such oil, so produced, gathered and transported, was in intrastate commerce because that Court found (erroneously as petitioner claims) that it was not definitely determined before the oil started on its journey that it was destined to points without the State.

(a) As to this, the uncontradicted evidence in the record establishes that substantially all of the very large quantity of oil so produced and gathered in that portion of West Virginia, which lies north of an east and west line drawn through Elm Run (including approximately the upper one-third of the State), and also of the oil so produced and gathered in the vicinity of Sand Fork and along and in the vicinity of petitioner's pipe line, running north from Sand Fork to Morgantown, was transported out of the State; that under existing conditions no part of the oil so transported could have been delivered to consignees within the State, and that the shippers of said oil knew these facts.

(b) As to the balance of the Pennsylvania Grade oil produced in West Virginia, gathered by petitioner and transported through that State (excepting a relatively small part thereof which was delivered to refineries within the State, but was so segregated as not to affect the course of the main stream of the oil) the record shows that all of it was moved in a continuous stream without stoppage or delay (except for the delays incident to transportation) and without change in form, from the time and place when and where it was received by petitioner until it was delivered to connecting carriers as aforesaid, at or near the Pennsylvania State line, and was by such carriers transported into Pennsylvania and that such transportation was "a typical, constantly recurring course" of business.

(c) The opinion of the Supreme Court of Appeals also states that, at the time it was received from the shipper, it was "known beyond all reasonable probability" (doubt) that a large part of the oil so produced, gathered and transported, would ultimately go outside of the State.

(d) Furthermore, as to most of the oil referred to in the preceding sub-paragraph (b) which actually passed out of the State, the record shows that the shippers of the same intended to ship to consignees without the State, an amount of such oil

equal to the quantity which was actually so transported out of the State for their account, and the Supreme Court of Appeals, construing the general Pipe Line Acts of the State, which provide that pipe line companies need not deliver the very oil received, but only a like amount of oil of the same grade, held, in effect, the meaning of those acts to be that such delivery by a carrier of a like amount of oil of the same grade, in lieu of that received, was the equivalent in law of the delivery of the very oil received.

Questions Presented.

(6) The following questions of law, with others, are raised in the case:

(a) Whether the Act in question, as construed by the Supreme Court of Appeals of West Virginia, is not repugnant to the Constitution of the United States and particularly to Section 8 of Article I thereof, and therefore invalid under the rule laid down in *Kenney* v. *Supreme Lodge,* 252 U. S., 411.

(b) Whether, when substantially all of the crude oil received by a carrier from a substantial portion of a State is transported without substantial stoppage, through and out of the State, and when, under existing conditions, no part of the oil so transported could have been consigned or delivered to consignees within the State (the facts being known to all parties concerned), it will not be presumed, if that be of any importance, that the shippers of such oil intended that it should be transported out of the State in interstate commerce, and whether such transportation in any event was not all interstate commerce.

(c) Whether, irrespective of the intention of the shippers thereof, when physical oil received by a pipe line company is transported without delays other than those incident to transportation and without change in form and in a continuous stream through and out of the State (except as to relatively small portions thereof, which are delivered

to refineries within the State, but which can be readily segregated and do not affect the flow or course of the main stream of oil), and when such transportation "is a typical, constantly recurring course" of business, such oil is not in interstate commerce from the time it is received by the pipe line company.

(d) Whether oil produced within a State, received by a carrier and actually transported in a substantially continuous stream and without change of form through that State to and across the State line is not in interstate commerce from the time it was received by the carrier, even though it was not definitely determined before the oil started on its journey that the precise physical oil so transported was destined to points without the State, when past experience and the course of business indicate, and justify the assumption, that a large part of the oil received by the carrier will ultimately be transported beyond the borders of the State, and such transportation "is a typical, constantly recurring course" of business.

(e) Assuming, as matter of law, that the delivery by a pipe line company of a like amount of oil of the same grade in lieu of that received is the equivalent in law of the delivery of the very oil received, whether, when the evidence shows that shippers intend to ship to consignees without the State a certain amount of oil received from such shippers by a carrier (sometimes with and sometimes without other oil), and that amount of oil is actually moved in substantially continuous transportation out of the State and delivered to such consignees for the account of such shippers, it will not be presumed that, before the oil actually so delivered to the consignees was received from the shipper thereof, it was definitely determined that such oil was destined to points without the State, and whether its transportation was not, in any event, all interstate commerce.

7. The question is also raised that the findings made by the Supreme Court of Appeals of West Virginia and

the conclusions of law of that court as to the Federal right are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts and to review such findings and also that as to certain findings by which a Federal right was denied petitioner, that there is no evidence to support such findings and hence a question of law results for decision.

8. Your petitioner is advised that the Supreme Court of Appeals of West Virginia was in error in making the decision and decree above referred to, so far as it reversed the decree of the Circuit Court of Kanawha County, West Virginia, because the effect of such decision was to adjudge that the Act as construed imposed a valid tax upon a large part of the interstate business of petitioner, on the ground that the same was intrastate commerce; whereas said Supreme Court of Appeals should have adjudged that such portion of petitioner's business was interstate commerce, and that the Act was therefore invalid as to, or did not apply to, the same, in conformity with the rule announced in *Ohio Railroad Commission* v. *Worthington*, 225 U. S., 101, 107-9, and in other cases recently decided by this Court.

9. Your petitioner presents herewith, as part of this petition, a transcript of the record in said cause in the Supreme Court of Appeals of West Virginia, and refers to the assignment of errors filed by petitioner on its application for said writ of error, and makes the same a part of this petition.

Your petitioner, therefore, respectfully prays that a writ of certiorari be issued out of, and under the seal of, this Court, directed to the Supreme Court of Appeals of West Virginia, commanding said Court to certify and send to this Court, on a day certain, to be therein designated, a full and complete transcript of

the record and of all proceedings of said Supreme Court of Appeals of West Virginia in said cause, which was entitled in that Court, to the end that said cause may be reviewed and determined by this Court as provided by law; and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and that the said final decree of the said Supreme Court of Appeals of West Virginia, in so far only as it adjudged that the decree of the Circuit Court of Kanawha County, West Virginia, pronounced in the said cause on the 8th day of September, 1920, should be set aside, reversed and annulled, and that the petitioner (appellee in the court below) pay to the respondents (appellants below) their costs about the prosecution of their appeal to the said Supreme Court of Appeals, be reversed and set aside, and that such further proceedings in said cause shall be had as to justice shall appertain.

And your petitioner will ever pray, etc.

Dated, April 1st, 1921.

THE EUREKA PIPE LINE COMPANY,
By FORREST M. TOWL, President.

JAMES M. BECK,
FRANK L. CRAWFORD,
Of Counsel for Petitioner.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

FRANK L. CRAWFORD, being duly sworn, says: That he is one of counsel for The Eureka Pipe Line Company, the petitioner herein; that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

FRANK L. CRAWFORD.

Sworn to and subscribed before me this
5th day of April, A. D., 1921.

FRANCES I. SIMS,
(SEAL) Notary Public,
New York County.

Commission expires March 30, 1922.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

THE EUREKA PIPE LINE COMPANY, Petitioner, AGAINST WALTER S. HALLANAN, State Tax Commissioner of the State of West Virginia, and E. T. ENGLAND, Attorney General of the State of West Virginia, Respondents.	No. 805.

PETITIONER'S BRIEF ON APPLICATION FOR WRIT OF CERTIORARI.

I.

The petitioner is a pipe line company organized under the laws of West Virginia. It does a very large interstate business, in the transportation through West Virginia (1) of oil originating in other states, and (2) of oil originating in West Virginia, gathered by petitioner, transported by it to, or near to, the State line and there delivered to connecting carriers for transportation into, through and beyond Pennsylvania. It also does a relatively small intrastate business in transporting oil which is both gathered and delivered to consignees within the State of West Virginia.

II.

The Act involved in this case, so far as its provisions are pertinent, is as follows:

"AN ACT to levy a privilege tax on any person, firm, or corporation engaged in the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, authorizing the state tax commissioner to provide rules and regulations for the collection of such tax, and defining the duties of the state tax commissioner hereunder.

Be it enacted by the Legislature of West Virginia:

Section 1. No person, firm or corporation, hereinafter called company, after the first day of July, one thousand nine hundred and nineteen, shall engage in or continue in the business of the transportation of crude oil or petroleum, or the distillates thereof, or of natural gas, by means of pipe lines, without the payment of an annual privilege tax hereby imposed for engaging in such business; * * * * *.

Section 2. Every person, firm and corporation engaged in this state in the transportation of either crude oil or petroleum, or the products and distillates thereof, or of natural gas, or both, by means of pipe lines for sale to consumers within or without the state, or use within or without the state in the making of any products derived therefrom, shall pay to the state, as *an annual privilege tax for engaging in such business in the state, two cents for each barrel of crude oil or petroleum,* or the distillates thereof, and one-third of one cent for each thousand cubic feet of such natural gas as is so transported or conveyed within this state. *Provided,* that only one such tax, annually, shall be required to be so paid.

Section 9. Any company engaging or continuing in the business aforesaid, without having first secured a license, as hereinbefore provided, shall be liable to a fine of not less than one thousand dollars nor more than ten thousand dollars."

III.

The constitutionality of the entire Act was directly attacked by the petitioner in the bill of complaint (Record, pages 19-21), and on both arguments below, on the grounds: first, that the Act necessarily by its terms imposed a burden on interstate commerce, and was, therefore, unconstitutional as to the petitioner's interstate business; and second, that the Act was not divisible and was, therefore, necessarily unconstitutional as to the whole of petitioner's business. This was substantially the position taken by the Circuit Court of Kanawha County, West Virginia, in its decision on the original trial. (See opinion, Record, page 693-4.)

The Supreme Court of Appeals, however, with a view to saving the constitutionality of the Act, construed it in the former part of its opinion (Record, page 710) as applying only to intrastate commerce, though it subsequently qualified this construction and in its final decree confined the application of the Act not to intrastate commerce in general, but to "intrastate commerce *as defined by the written opinion filed*" in the case by that Court. (Record, page 702.)

Similarly, the final clause of the opinion of the Court (Record, page 720) reads as follows (italics ours):

> "What we have said results in a reversal of the decree of the Circuit Court to the extent that the defendants are enjoined from collecting the tax upon the intrastate business of the complainant, *as the same is above defined,* and in all other respects said decree will be affirmed."

As so defined in such opinion, intrastate commerce is made to include a large part of petitioner's interstate business, so that, as petitioner contends, the Act, as construed by the highest court of the State, is repugnant to the interstate commerce and due process clauses, and

is, therefore, invalid as an attempt to "achieve a result that the Constitution of the United States forbad."

Kenney v. *Supreme Lodge*, 252 U. S., 411, 415.

Hence, there is here drawn in question the validity of a statute of the State of West Virginia, on the ground of its being repugnant to the United States Constitution, and the decision below having been in favor of the validity of the Act, as so construed, it would seem that a writ of error was properly allowed. In view, however, of the language of Section 237 of the Judicial Code, as amended by the Act of September 6, 1916, counsel for petitioner, for greater certainty, ask that a writ of certiorari also be granted, since it may be considered that petitioner is claiming a "right, privilege or immunity" under the Constitution of the United States, and that the decision of the State Court was against such right, privilege or immunity.

IV.

The real issue in controversy on this application is as to whether some 5,000,000 barrels of crude oil of the so-called Pennsylvania Grade, produced in West Virginia, gathered (i. e., piped from producer's tanks at the wells) by petitioner, and transported by petitioner through the State, and by connecting carriers out of the State during the twelve months ending June 30, 1919, were not transported in interstate commerce from the time the oil was first received by petitioner. The Supreme Court of Appeals held otherwise, chiefly because, with the oil so transported, there was received by the carrier in addition something over 1,000,000 barrels of similar oil, which was delivered to refineries within the State of West Virginia, and because the Court found (erroneously as we claim) that it was not determined, when the oil was delivered to the

pipe line company, "as to which particular producer will ship his oil without the State," although the opinion states that "it is known that beyond all reasonable probability (doubt) a large part of it (the oil) ultimately will go outside the State." (Record, page 718.)

We respectfully submit that this finding is not supported by the evidence, and that it is so intermingled with the conclusion of law as to make it necessary to analyze the facts in order to pass upon the Federal question involved, to wit: whether the transportation in question was not interstate commerce throughout.

V.

The evidence in the record, especially when read together with certain conclusions of law contained in the opinion, demonstrates that the oil in question was in interstate commerce from the moment it was received by petitioner.

1. A large part of the total amount of oil in question is produced in the territory north of a line drawn east and west through Elm Run, West Virginia, including roughly the upper one-third of the State. (Map, Plff's Ex. 3, Record, page 662). Of this oil, not exceeding 180,000 barrels, all produced in the neighborhood of Eureka on the Ohio River, was delivered to the St. Mary's refinery situated near that place on the Ohio. (Record, page 87; Plff's Ex. 4, page 664.) With that exception, substantially all the oil produced in the territory in question (and the production of such oil was very widely distributed over the territory) went out of the State, and could not, under the conditions, have gone elsewhere. The same was true of all the oil produced in the Sand Fork region and along petitioner's pipe line running from Sand Fork to Morgantown (Map, Plff's Ex. 3, Record, page 662).

Thus, Mr. Kenney, assistant superintendent of the Company, testified (Record, page 143):

"Q. With the exception of so much of the oil produced in the neighborhood of Eureka as goes to the St. Mary's refinery, do you not know whether the rest of the oil so produced as you have described, goes out of the State or not?

Mr. Avis: Are you referring to the physical oil?

Mr. Crawford: I am referring to the physical oil, in all my questions now.

A. Yes, sir, *with that exception the oil does go out of the State.*

Q. That is, all the oil produced in the State of West Virginia north of a line running east and west through Elm Run, except that which goes to the St. Mary's refinery, is that right?

A. Yes, sir, and the small deliveries mentioned at Downs Station.

Q. Oh, yes, amounting to forty or fifty barrels a year. * * *

A. About forty or fifty barrels a year.

* * * *

"Q. And the same is true, is it not, of the oil produced on the line running down to Sand Fork, or from Sand Fork, rather?

A. Yes, sir.

Q. All of that goes out of the State, does it not?

A. *All of that oil goes out of the State.*"

Throughout the period in question, oil flowed only in the direction of Morgantown, and never in the reverse direction (Record, pages 81-2, 84), so that all of this great body of oil must have gone out of the State, since there was nowhere else for it to go, there being no refineries in the territory in question, except St. Mary's refinery already mentioned, on the Ohio River, and since the connecting carriers all transported the oil out of the State. These general facts were, of course,

generally known and must have been known to all shippers. The only fair inference, therefore, is that the shippers, in delivering oil to the petitioner, intended that it should be transported out of the State, as it was.

2. As to all the 5,000,000 barrels in question, the oil, from the moment it was received, was moved in a continuous stream through the petitioner's system, with no greater delays than those incident to transportation, until it was delivered to connecting carriers at or near the Pennsylvania State line. Thus, Mr. Kenney testified (Record, page 159):

> "*We move the oil along in a continuous stream* and do not particularly hold it at any point for any person or corporation." * * *
>
> "Q. The oil that is produced north of Elm Run of producers or owners who deliver to you for transportation, unconsigned, is how held or stored until it is consigned?
>
> A. *That oil is not held. It moves along through our pipes with the stream of that particular grade of oil* and is not held in our pipes or tanks."

In like manner, Mr. Swisher, general shipping agent of the petitioner, testified (Record, pages 290-1):

> "Q. When you receive oil and you enter a credit on your production books, what becomes of the physical oil, the actual oil?
>
> A. *The physical actual oil moves on in the usual channel or stream towards—well, it always moves forward.*
>
> Q. Unless it has been delivered within the State of West Virginia, where does it move to?
>
> A. It moves outside the State. * * *
>
> Q. Actual oil is in the stream which is run through the State of West Virginia and out into another State unless it has been delivered to refineries within the State?
>
> A. Yes, sir."

Again Mr. Swisher testified on cross-examination, referring to oil moving from Bula and Core (Record, page 237):

> By Mr. Avis:
> "Q. Well, does not this oil go into Morgantown, that comes from these places? A. Yes, sir.
> Q. Do you not hold it there and—— A. *That oil is moving all the time, of course.*
> Q. Well, but it is placed in tanks at Morgantown, is it not? A. *And is moved out almost immediately,* on tenders, *going through constantly.*"

Again (Record, pages 341-2):

> By Mr. Avis:
> "Q. Do I understand * * * if I were a producer in Kanawha County, West Virginia, and should deliver to you, unconsigned, 500 barrels of oil, that you would start that oil to move forward without any order from me? A. *It would move right in the regular stream along with the other oil.*"
> "Q. And it might possibly go out of the State before I consigned it, might it not? A. Yes, sir."

Nor was there any stoppage at Morgantown or any other central point, as apparently supposed by the learned Supreme Court of Appeals; for the testimony is quite conclusive that, during the period in question, the pipes leading from Morgantown to the Pennsylvania State line through which Pennsylvania Grade oil was pumped were continuously worked to their utmost capacity, could not have moved the oil any faster, and that the tanks at Morgantown were kept pumped low. (Record, page 100.)

And the opinion of the learned Supreme Court of Appeals says (Record, page 718):

> "Of course, movement of oil through the trunk lines is continuous."

The only portions of the Pennsylvania Grade oil under consideration which were not moved out of the

State, were those delivered to St. Mary's refinery on the Ohio River, as already stated; to the so-called Elk refinery, near Charleston, West Virginia; and to a refinery at Parkersburg; and the oil delivered to all of these refineries, the amount of which is proved in the record, was so segregated as not in any way to affect the course of the general stream of the oil through the State (Kenney, Record, pages 82-7.)

It also appears by the record that such transportation by petitioner of Pennsylvania Grade oil produced in West Virginia, had continued at least since 1911, during which time all but from six to fourteen per cent. of such oil so gathered and transported by petitioner, had been carried out of the State; so that there was here, if ever, the "typical, constantly recurring course" referred to by Mr. Justice Holmes in the *Swift* case (Record, page 621).

> *Swift & Co.* v. *United States*, 196 U. S., 375, 398-9.

3. We submit that, irrespective of any proof of intent, the evidence cited above shows interstate commerce.

(a) It is the fact which is determinative.

In *Western Union Tel. Co.* v. *Speight*, 254 U. S., 17, decided at the present term of this Court, Mr. Justice Holmes says:

> "The transmission of a message through two states is interstate commerce as a matter of fact. *Hanley* v. *Kansas City Southern Ry. Co.*, 187 U. S., 617. The fact must be tested by the actual transaction. *Kirmeyer* v. *Kansas*, 236 U. S., 568, 572."

In the *Lottery Case*, 188 U. S., 321, at page 345, Mr. Justice Harlan said:

> "Undoubtedly the carrying from one State to another by independent carriers of things or com-

> modities that are ordinary subjects of traffic, and which have in themselves a recognized value in money, constitutes interstate commerce."

In the case of *The Daniel Ball*, 10 Wallace, 557, 565, Mr. Justice Field said:

> * * * "Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced."

In *International Text Book Co.* v. *Pigg*, 217 U. S., 91, at page 107, Mr. Justice Harlan quotes with approval the statement of Judge Sanborn, in the Court below, that:

> "Importation into one State from another is the indispensable element, the test, of interstate commerce."

And in *Public Utilities Comm.* v. *Landon*, 249 U. S., 236, at page 245, Mr. Justice McReynolds said:

> "Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

(b) The fact that a relatively small percentage of the total amount of the oil in question received by petitioner was delivered within the State, in no way affected the interstate character of the main stream of oil.

In *Ohio Railroad Comm.* v. *Worthington*, 225 U. S., 101, 106-8, coal was diverted en route to the port of shipment and sold within the State, and it was not known at the mines what particular coal would be so diverted. The interstate rate was applied solely to such coal as was in fact placed upon vessels for carriage beyond the State. It was held that *the fact governed*, and

that all the coal which did finally leave the State was to be regarded as in interstate commerce "from the beginning to the end of its transportation."

In *Penna. Gas Co.* v. *Pub. Service Comm.*, 252 U. S., 23, 27, 28, natural gas was piped from its source in Pennsylvania into the State of New York. On the way, some of the gas was delivered to consumers in the cities of Warren, Corey and Erie, Pennsylvania, while the remainder of the gas was piped to consumers in New York State. It was held that the gas which reached the New York consumers was in interstate commerce "from the beginning to the end of its transportation." The distribution of a part of the gas within the State of Pennsylvania, while the balance was being transported into New York, made no difference in the Court's conclusion.

We submit that, under the foregoing authorities, the business carried on by The Eureka Pipe Line Company in gathering oil produced in West Virginia and transporting it through, and by means of connecting carriers out of, that State, during the period in question, was interstate commerce from the moment when the oil was received by the petitioner, as to all of such oil actually carried out of the State.

VI.

The general Pipe Line Acts of West Virginia limit the obligation of a pipe line company to the delivery to the owner or his assigns at one of the company's regular delivery stations of "a quantity of merchantable petroleum" equal to the quantity received and of the same grade. (Record, pages 51, 52); and such is the usual agreement made by the company. On this point,

the opinion of the learned Supreme Court of Appeals says (Record, page 718):

> "The agreement of the owner of the oil upon delivery is not that he shall receive back the same oil that he has delivered, but the same amount of oil of a similar grade. We think this agreement with the owner, as well as the statute of this State, which recognizes the right of pipe line companies to deliver a like amount of oil of the same grade in lieu of that received, is the equivalent in law of the delivery of the very oil received. The parties by their contract make it so, and the exigencies of the business, as well as the law of the land, justify the contract."

Thus the Court in effect construed the statute as meaning that the delivery of "a like amount of oil of the same grade in lieu of that received, is the equivalent in law of the delivery of the very oil received." But the evidence shows that substantially all of the 5,000,000 barrels of oil in question which actually left the State was shipped by certain large shippers, the South Penn Oil Company, the Carter Oil Company, the Hope Natural Gas Company, the Pure Oil Company, and the West Virginia Pipe Line Company (Plffs.' Ex. 65, Record, page 679; Plffs.' Ex. 4, Record, page 664); and representatives of each of these companies testified in substance as to their intention, prior to the starting of the oil on its journey, that the oil subsequently delivered out of the State to their consignees or amounts equal thereto should be so transported and delivered for their account (Ware, Record, pages 509-10; Beardsley, Record, pages 512-13; Young, Record, pages 409, 414; Ellis, Record, pages 231-2; Breiner, Record, pages 252-3).

Hence, under the construction of the law laid down by the Court below, it follows, in the case of all these shippers, that as to all the oil transported for them out

of the State, it was, as a matter of law "definitely determined" at the time the oil was received by the petitioner that it was "destined to points without the State," and was therefore (irrespective of other considerations) in interstate commerce from the moment it started on its journey.

VII.

The learned Court below relies upon *McCluskey* v. *Marysville & Northern Ry. Co.*, 243 U. S., 36; and *Arkadelphia Co.* v. *St. Louis S. W. Ry. Co.*, 249 U. S., 134. It is respectfully submitted that neither of these decisions supports the conclusion arrived at by the Court below.

In the *McCluskey* case the lumber was carried to tidewater by the shippers' own railroad, and after part of it had been sold, the rest was towed by the shipper to the mills. *No part of the lumber was ever delivered to a carrier until after it had been manufactured into lumber.* (Page 39.)

In the *Arkadelphia* case, what was shipped in the first instance was "rough material." When this rough material left the woods, a bill of lading was issued from the woods to the mill, upon reaching which *the material passed out of the custody of the carrier* and was manufactured into various articles. These were retained until dried, and the process of manufacturing and drying occupied about five months. Mr. Justice Pitney said, at page 151, in holding that the movement to the mill was not in interstate commerce (italics ours):

> "It is not merely that there was no continuous movement from the forest to the points without the State, but that when the rough material left the woods it was not intended that it should be transported out of the State, or elsewhere beyond the mill, until *it had been subjected to a manufacturing process that materially changed its character, utility,*

and value. The raw material came to rest at the mill, and after the product was manufactured it remained stored there *for an indefinite period*—manufacture and storage occupying five months on the average—for the purpose of finding a market. Where it would eventually be sold, no one knew."

Mr. Justice Pitney cites *Bacon* v. *Illinois,* 227 U. S., 504, 515-16. This is a significant citation because, in the latter case, grain, which was the subject of transportation, was removed from the custody of the carrier and placed in a private elevator, and it is upon this point precisely that Mr. Justice Hughes, in his opinion in that case, held that the interstate journey had been broken (227 U. S., 516).

We submit that there is nothing in the facts of the instant case corresponding to the situation shown in the *Arkadelphia* case. There was no long delay at any point, and no change in the form of the commodity. The oil was carried unchanged, in a substantially continuous movement, from the point and time when it was first received until it left the State. It was delivered to the carrier at the outset of its journey and never left the custody of carriers until its final delivery to the consignee.

VIII.

In view of the important Federal questions involved in the case as disclosed by the petition, and by the foregoing argument, petitioner again asks that a writ of certiorari be issued as prayed for in the petition.

Respectfully submitted,

JAMES M. BECK,
FRANK L. CRAWFORD,
Counsel for Petitioner.

this case.

EUREKA PIPE LINE COMPANY *v.* HALLANAN, STATE TAX COMMISSIONER, ET AL.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

No. 255. Argued November 9, 1921.—Decided December 12, 1921.

1. A judgment of a state court which sustains a state tax on interstate commerce over the objection that the statute under which it was imposed is unconstitutional, is reviewable here by writ of error, and none the less so because the court below reached its result by construing the statute as applicable to intrastate commerce only and by erroneously classifying as intrastate the commerce in question. P. 270.
2. A pipe line company received oil from producers in West Virginia, subject to their right thereafter to order equal quantities of like grade to be transported and delivered to local destinations, or to extra-state destinations under an interstate tariff, and subject to its duty under the state law to have in its pipes and connected reservoirs enough to satisfy such orders; it charged the producers a storage and gathering charge under the state law; the oil as received became subject to the company's control, was commingled with other like oil, piped through the company's gathering system to its trunk line pipes, and, except for relatively small quantities ordered diverted to local delivery, became part of a stream of oil passing through and out of the State. *Held*, that a tax on the transportation, in so far as measured by the quantities produced in but moving out of West Virginia, was void under the Commerce Clause. P. 271.

87 W. Va. 396, reversed; writ of certiorari denied.

ERROR to a judgment sustaining a tax in a suit brought by the plaintiff in error to restrain its enforcement. See the next case, *post*, 277.

Mr. Frank L. Crawford, with whom *Mr. James M. Beck* was on the briefs, for plaintiff in error.

The oil having been transported in a continuous stream through and out of the State (except as to relatively small portions diverted to refineries within the State), and having at the very outset of its journey been delivered by the producers to, and remained in the custody of, a common carrier (the plaintiff) until so transported, was in interstate commerce from the moment it was received by the plaintiff. *Western Union Telegraph Co.* v. *Speight*, 254 U. S. 17; *United States* v. *Hill*, 248 U. S. 420; *Chicago, Rock Island & Pacific Ry. Co.* v. *Wright*, 239 U. S. 548; *North Carolina R. R. Co.* v. *Zachary*, 232 U. S. 248; *Lottery Case*, 188 U. S. 321; *International Textbook Co.* v. *Pigg*, 217 U. S. 91; *Ohio R. R. Commission* v. *Worthington*, 225 U. S. 101; *Western Oil Refining Co.* v. *Lipscomb*, 244 U. S. 346; *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23; *Pennsylvania Gas Co.* v. *Saxe*, 229 N. Y. 446; *Swift & Co.* v. *United States*, 196 U. S. 375; *Texas & New Orleans R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111; *Bracht* v. *San Antonio &c. Ry. Co.*, 254 U. S. 489; *Bailey* v. *Bensley*, 87 Ill. 556; *Coe* v. *Errol*, 116 U. S. 517; *Bacon* v. *Illinois*, 227 U. S. 504; *General Oil Co.* v. *Crain*, 209 U. S. 211; *Standard Oil Co.* v. *Graves*, 249 U. S. 389. Distinguishing: *McCluskey* v. *Marysville & Northern Ry. Co.*, 243 U. S. 36, and *Arkadelphia Co.* v. *St. Louis Southwestern Ry. Co.*, 249 U. S. 134.

In view of plaintiff's operating contracts, and of the Pipe Line Act of West Virginia as construed by its highest court, the delivery by plaintiff to a consignee of a like amount of oil of the same grade in lieu of that re-

ceived, was equivalent in law to delivery of the very oil received. 87 W. Va. 396; *Bailey* v. *Bensley,* 87 Ill. 556; *National Exchange Bank* v. *Wilder,* 34 Minn. 149; *Hall* v. *Pillsbury,* 43 Minn. 33.

In view of such construction by the court below, and of the evidence that the oil, or like amounts thereof, was by its owners intended to be, and actually was, transported through and out of the State, it will be presumed that such oil was received by plaintiff for interstate transportation, and its transportation, therefore, was interstate commerce. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498; *Worthington Case, supra; Sabine Tram Case, supra; Railroad Commission of Louisiana* v. *Texas & Pacific Ry. Co.,* 229 U. S. 336; *Lipscomb Case, supra.* See *Creswill* v. *Knights of Pythias,* 225 U. S. 246.

Even if the view of the court below were adopted, that the gathering charge covered the service of gathering and conveying the oil to plaintiff's trunk lines, and that for the transportation through its main pipe lines to destination plaintiff charged the further rate allowed by the Interstate Commerce Commission (which is not admitted), still this would only be a case of re-billing en route, and such re-billing would be immaterial in view of the intention of the parties and the general course of business. *Worthington Case, supra; Sabine Tram Case, supra; Lipscomb Case, supra; Atchison, Topeka & Santa Fe Ry. Co.* v. *Harold,* 241 U. S. 371; *South Covington Ry. Co.* v. *Covington,* 235 U. S. 537. But as it was a case of a double charge for one continuous service, it is not necessary to interpret the transaction as one of re-billing.

Where intrastate and interstate transactions are so interwoven, the authority of Congress extends to the whole situation. *Minnesota Rate Cases,* 230 U. S. 352, 381, 382,

399; *Southern Ry. Co.* v. *United States*, 222 U. S. 20; *Erie R. R. Co.* v. *Winfield*, 244 U. S. 170; *Philadelphia & Reading Ry. Co.* v. *Polk*, 256 U. S. 332.

Mr. Fred O. Blue and *Mr. S. B. Avis*, with whom *Mr. E. T. England*, Attorney General of the State of West Virginia, and *Mr. Wm. Gordon Mathews* were on the brief, for defendants in error.

There is not drawn in question the validity of a statute of or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, with the necessary decision in favor of such validity, so as to justify review here by writ or error; nor is there drawn in question any title, right, privilege or immunity claimed under the Constitution, treaties or laws of the United States, so as to justify review by certiorari. The claim of plaintiff is, in effect, that because the oil is a lawful subject of interstate commerce, it may neither be subject to a tax, nor made the measure of a tax, prior to the determination by its owner that it shall be placed in interstate commerce.

The court below was correct in holding that it was the legislative intent to impose a tax only upon the intrastate transportation of the plaintiff and measured by the amount of such commerce. *Quong Ham Wah Co.* v. *Industrial Accident Commission*, 255 U. S. 445; *Kehrer* v. *Stewart*, 197 U. S. 60; *Pullman Co.* v. *Adams*, 189 U. S. 420; *Platt* v. *New York*, 232 U. S. 58; *Barrett* v. *New York*, 232 U. S. 14; *Louisville &c. Ry. Co.* v. *Mississippi*, 133 U. S. 587; *Peik* v. *Chicago &c. R. R. Co.*, 94 U. S. 164; *Osborne* v. *Florida*, 164 U. S. 650. This construction and interpretation is binding upon this court. *Elmendorf* v. *Taylor*, 10 Wheat. 152; *Quong Ham Wah Co.* v. *Industrial Accident Commission, supra.*

The gathering, running and transporting of oil from wells to delivery points in West Virginia, not tendered for

shipment but held subject to the order of the owner, is an intrastate service. Until the oil is tendered for shipment, the plaintiff's relation thereto is that of bailee, not carrier. Not being committed to interstate commerce, it is subject to taxation by the State to the owners thereof until committed to such commerce. The essential character of the transaction, and not the purpose or mental state of the owners, determines whether state or national law applies. *New York Central R. R. Co.* v. *Mohney*, 252 U. S. 152; *McCluskey* v. *Marysville & Northern Ry. Co.*, 243 U. S. 36; *Arkadelphia Co.* v. *St. Louis Southwestern Ry. Co.*, 249 U. S. 134; *General Oil Co.* v. *Crain*, 209 U. S. 211; *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas*, 204 U. S. 403; *Coe* v. *Errol*, 116 U. S. 517.

The business of plaintiff under consideration is intrastate, and was so regarded and treated by it. *Pennsylvania R. R. Co.* v. *Knight*, 192 U. S. 20, is controlling. [Distinguishing many of the cases relied on by plaintiff in error.]

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill to prevent the enforcement against the plaintiff of a statute of West Virginia that forbids engaging in the business of transporting petroleum in pipe lines without the payment of a tax of two cents for each barrel of oil transported. Acts of 1919, Extraordinary Session, c. 5. It is set up that the statute is contrary to the Constitution of the United States in several ways, one of these being that as applied to the plaintiff it imposes a tax upon commerce among the States. The plaintiff owns a system of pipe lines in West Virginia connecting with other pipe lines in Ohio and Kentucky on the west and in Pennsylvania on the east of the State. Through the plaintiff's pipes oil flows in a continuous stream to the state line and beyond—in all amounting to over twenty-two million barrels in the year ending June 30, 1919. There are four

grades of the oil thus moved. Two of these are produced partly in West Virginia. According to the figures accepted by the defendants in error, out of a total 9,076,599.83 barrels of the Pennsylvania grade 6,510,081.51 barrels came from this State, upon over six millions of which the plaintiff made a charge of twenty, later thirty, cents for gathering, on an interstate tariff and also under a local statute. But all the oil of the same grade was mixed, regardless of source, and of the Pennsylvania grade only 1,239,099.55 barrels were used in West Virginia. It is admitted that the tax may be levied in respect of the last item, but the question before us is whether the tax can be laid upon the whole product of the State upon which was imposed the gathering charge.

The Circuit Court of the State held that the statute was void. The Supreme Court of Appeals sustained it so far as the oil produced in West Virginia was concerned. But as the Court declared that the act should be construed to apply only to commerce within the State it is urged that there is no jurisdiction here of the writ of error because there is no question as to the validity of a statute so limited. The plaintiff in error also applied for a writ of certiorari so that the objection would be immaterial were we not required to determine upon which proceeding the decree should issue. In view of that necessity we dispose of the matter before going further. Upon the declaration of the Court we may conjecture that if it had considered that the oil in question moved in interstate commerce it would have agreed with the Court below, and on this ground it is argued that the mistake, if any, was not in approving the statute but in the Court's conception of interstate commerce. But we must look at what the Court has done, not at its mode of reaching the result. What it has done is to decide that the statute covers all the oil produced in West Virginia and that it shall be upheld in so doing. The nature of the mistake that in-

duced the act is immaterial. A case would not be withdrawn from the jurisdiction of this Court in error by a declaration that a statute was addressed only to intrastate commerce if it was applied wholesale to freight passing across the continent. The fact that the error was less does not affect the principle involved. But furthermore the Court only confined the statute to intrastate commerce "as above defined," that is, to commerce that embraced what the plaintiff carried on.

We return to the facts affecting the merits. When oil is received from the producer he receives a credit on the books of the plaintiff pipe line, and thereafter is charged for storage, as it is called, the plaintiff being required by the laws of West Virginia to keep enough oil in its tanks and pipes to satisfy such credits. Code, 1913, § 3564. If the producer desires to deliver oil outside the State it hands to the pipe line company what is called a tender of shipment for so many barrels of the specified kind of oil, naming the consignee, and expressed to be subject to an identified tariff filed with the Interstate Commerce Commission. This is said to be a joint tariff in which the connecting carriers share, but they do not share in the twenty or thirty cents charged for gathering the oil. The argument for the defendants in error of course is that the producer is free to sell within or without the State and that the movement of gathering having taken place before any order is given and while the producer still can do as he likes, it must be regarded as intrastate.

It does not seem to matter for the question before us, whether the delivery to the pipe line be regarded as making it the owner of what it receives and a debtor for the amounts, as in the case of a bank, or as akin to those transactions that are held to make the recipient a bailee of the mingled mass and the bailors tenants in common, as seems to have been assumed. Whether debtor or bailee the pipe line controls the movement of any specific oil in

its hands and the bailor assents to its doing so. The bailor assents to its becoming part of a stream that is pouring through and out of the State. Its only right is to call on the pipe line to divert a portion of that stream. So far as the oil that it calls for goes out of the State with the general current it seems to us not to be distinguishable from the rest admitted to move in interstate commerce. No bailor has title to any specific oil, and to deny the character of interstate commerce to the whole stream simply because some one might have called for a delivery that probably would have been made from it in an event that did not happen, is going too far. The charges for gathering and storage seem to us not to affect the case. The storage merely means that enough oil must be kept in the tanks and pipes to satisfy credits. The oil runs into a tank on one side and out on the other. The tank may be regarded as a pipe of larger size. Whether the plaintiff in error was right or wrong in relying upon state law for its gathering charge its attitude does not matter here.

As has been repeated many times, interstate commerce is a practical conception, and, as remarked by the court of first instance, a tax to be valid "must not in its practical effect and operation burden interstate commerce." It appears to us as a practical matter that the transmission of this stream of oil was interstate commerce from the beginning of the flow, and that it was none the less so that if different orders had been received by the pipe line it would have changed the destination upon which the oil was started and at which it in fact arrived. We repeat that the pipe line company not the producer was the master of the destination of any specific oil. Therefore its intent and action determined the character of the movement from its beginning, and neither the intent nor the direction of the movement changed.

Decree reversed.

Writ of certiorari denied.

MR. JUSTICE CLARKE, dissenting.

I greatly regret that I cannot concur in the opinion and judgment of the court in this case, and I think it is my duty to state briefly as I may the grounds of my dissent.

The Eureka Pipe Line Company is a West Virginia corporation, owning pipe lines which are wholly within that State. Of the twenty-two and a half millions of barrels of oil which the company transported in the year in controversy, ending July 1, 1919, six and one-half millions of barrels were produced in West Virginia and the remainder came from other southern and western States. Of that produced in West Virginia, one and one-quarter millions of barrels were delivered to refineries in that State, and the balance was delivered to connecting carriers, at the state line, for interstate transportation. There is no controversy as to the oil from other States or as to the state-produced oil that was delivered to refineries in the State; but to the holding of the court that the state-produced oil, which ultimately went out of the State, moved in interstate commerce from the time it left the wells, I cannot agree.

The company owns about forty-three hundred miles of pipe line in West Virginia, all of which, with the exception of a few hundred miles of main or trunk line, is used for the purpose of "gathering" oil from twenty-seven counties of the State,—it covers them as with a network.

The admitted method of doing business was as follows: When the oil was delivered by the producer to the company, it issued to him what is called a "credit balance," which was a paper reciting that he had credit on its books for the designated number of barrels of oil and it contained a blank for the entry of "storage charges." The oil thus delivered moved to some one of several points on the main lines of the company, all within the State and designated in the record as "central points," or "delivery

points," or "tariff points." This movement of the oil was under a tariff filed by the company with the State Public Service Commission, which, in the year under discussion, read:

"*Local Tariff.* The rates named in this tariff are for *intrastate* transportation of crude petroleum."

"For gathering and transporting oil from wells to delivery points within the State of West Virginia, 20 cents. Storage, per day, 1/40th cent."

Thus, by the contract between the parties, the oil was received for transportation to points within the State only. No consignee or destination was named, but, on the contrary, a charge was provided for indefinite storage, which the record shows was often paid, and the parties united in calling this part of the transportation a "Local and an intra-state shipment."

Further, in order to give the oil any intrastate delivery the owner was required to issue to the company a paper called a "delivery order," but, if he wished it to move in interstate commerce he must deliver to the company an entirely different order called a "tender of shipment," which was a paper naming a place of delivery outside the State and reciting that the transportation should be under a designated interstate tariff.

All transportation of the oil before the issuing of the "tender of shipment" was under the local tariff described. It was not released for transportation or delivery of any kind, either state or interstate, until a "delivery order" or a "tender of shipment" was delivered to the company by the owner and when the latter was delivered the oil moved thereafter under the terms of another, a joint interstate tariff, filed with the Interstate Commerce Commission at Washington by the Eureka Company, in conjunction with other companies owning lines connecting with its mains at the state line.

To this we must add that, as a West Virginia corporation, the Eureka Company was subject to the statute of that State, requiring that any company engaged in the transportation of petroleum in the State shall not in any manner ship or transport, or permit to be shipped or transported, or in any manner remove from the tanks or pipe lines of such company, any petroleum without a written order (a "delivery order" for intrastate, or a "tender of shipment" for interstate, delivery); and also that every such company "shall at all times have in their pipes and tanks an amount of merchantable oil equal to the aggregate of outstanding . . . credit balances, on the books thereof."

If this were all there was in the transaction, plainly the oil could not be considered as moving in interstate commerce until a "tender of shipment" was issued, for until that time it was without a consignee or destination and was held under a local tariff, providing a rate of twenty cents per barrel for intrastate transportation, and a charge for storage.

But the court concludes that this plainly intrastate shipment is converted into an interstate shipment by a single circumstance, viz: that when the oil, thus moving under a local tariff for a local charge, reached the trunk line, if that line happened to be "running" oil of the same kind and quality, the local oil was turned into the main and was at once moved out of the State, even though a "tender of shipment" may not have been issued to release it and give it destination. It is to be noted, however, that if the company was not "running" oil of the like kind and quality when the local oil reached the trunk line, it was held at the junction (tariff point) until like oil was to be "run" again, when it was sent forward. This may have been for a day or for two weeks.

This circumstance, that the oil became under these conditions a "part of a stream that is pouring through

and out of the State," it is held, gave the shipment an interstate character from the moment it left the wells. This holding is adopted, says the court, as a "practical conception" of the matter, but it is precisely because it seems to me a too highly technical conception to find place in the world of practical business, that I dissent from such a conclusion. It is true that the physical oil moved, as stated, out of the State, but its removal without a tender of shipment caused no reduction whatever in the volume of like oil in the State; that volume, by the statute, by the contract of the parties and by the tariff filed by the company, must continue undiminished to meet all outstanding "credit balances" and the evidence of the assistant superintendent of the company is that this requirement was constantly complied with. The conclusion of the court, therefore, allows the mere business convenience of the company (it saves storage tankage) to convert into interstate commerce that which all the parties, by their contract and conduct treated, and charged and paid for, as an intrastate transportation, and thereby subordinates, in my judgment, the substance to the merest form of the transaction.

Believing, as I do, that this transporting of oil over approximately four thousand miles of "gathering" lines in the State to the trunk lines, was a local shipment, as the parties all declared it to be, I think the State should be permitted to impose a reasonable license or occupation tax upon the company engaged in such extensive state activity, measured by the volume of such traffic, and that the judgment of the Supreme Court of Appeals of West Virginia restraining the statute to this scope should be affirmed.

For the reasons stated in the dissenting opinion of Mr. Justice Brandeis in No. 30 of this term, *Dahnke-Walker Milling Co.* v. *Bondurant*, *post*, 282, I think this case is subject to review in this court only upon writ of certiorari,

and that, therefore, the motion to dismiss the writ of error should have been granted, but it has seemed to me important to discuss, as I have done, the question of interstate commerce involved.

MR. JUSTICE PITNEY and MR. JUSTICE BRANDEIS join in this opinion as to the merits of the controversy. MR. JUSTICE BRANDEIS also concurs as to the question of jurisdiction.